

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

HILDA GONZALEZ GARZA, ET AL § CASE NO. 7:18-CV-00046
VERSUS § MCALLEN, TEXAS
STARR COUNTY, ET AL § MONDAY,
§ FEBRUARY 26, 2018
§ 10:22 A.M. TO 1:53 P.M.

TEMPORARY RESTRAINING ORDER

BEFORE THE HONORABLE RANDY CRANE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PARTIES:

SEE NEXT PAGE

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MCALLEN, TEXAS; MONDAY, FEBRUARY 26, 2018; 10:22 A.M.

2 THE COURT: All right. Let me call for
3 announcements first, 18-CV-46, Hilda Gonzalez Garza, et al
4 versus the County of Starr, et al. Let's start with the
5 Plaintiffs. Who's here for the two named Plaintiffs?

6 MS. MORENO: Good morning, Your Honor. My name is
7 Celina Moreno with the Mexican American Legal Defense and
8 Educational Fund, or "MALDEF." Here with me is Alejandra
9 Avila and Nina Perales, also with MALDEF.

10 MR. OLIVARES: Good morning, Your Honor. Efren
11 Olivares with the Texas Civil Rights Project for the
12 Plaintiffs. And here with me is Matt Stevens, also for the
13 Plaintiffs.

14 THE COURT: All right. And for the Defendants --

15 MS. LEEDS: Good morning, Your Honor. Eileen Leeds
16 and Ysmael Fonseca representing the Plaintiffs. At this
17 hearing Mr. Alvarez is here as a result of everything that
18 happened all at once, and, you know, we really haven't
19 communicated. but he is --

20 THE COURT: All right. And you're representing all
21 the --

22 MS. LEEDS: -- representing himself to that extent.

23 THE COURT: All right. I think you said Plaintiffs
24 but you mis-spoke. You represent all the Defendants.

25 MS. LEEDS: Correct.

1 THE COURT: And Mr. Alvarez represents Mr. Alvarez,
2 also maybe in addition to you, Ms. Leeds?

3 MR. ALVAREZ: That's -- he's one of the County
4 Commissioners, Judge, and I mean everything happened at once,
5 Judge, that I don't even know where we fit. So, we're here.

6 THE COURT: All right. And I did get your
7 continuance request --

8 MR. ALVAREZ: Yeah.

9 THE COURT: -- which also indicated as a basis that
10 you were hoping to try to work this out, and so I didn't know
11 if there were some discussions about resolving this or not
12 that you all wanted to visit with me about. If not, then we
13 can move on here.

14 MR. ALVAREZ: Yes, Judge. And we did file a motion
15 for continuance on Saturday morning, Judge, and I'm glad the
16 Court got it and got to review it but -- because we hadn't had
17 any communication with MALDEF or the other Defendant -- that
18 is Defendants' case -- or Plaintiffs', I'm sorry. But we did
19 talk a while ago, Judge, here in the courtroom, inside the
20 courtroom, it seems like they don't want to work this case
21 out, Judge. So I mean --

22 THE COURT: Okay.

23 MR. ALVAREZ: -- and we tried to try to get a
24 continuance on this matter, Judge, but we were not able to get
25 them to a table to agree to it, Judge.

1 THE COURT: All right. So let's just move forward
2 here. So read all of the filings by the Plaintiffs before we
3 broke for the weekend, and it wasn't until this morning when I
4 got to the office that I'd seen everything that came in over
5 the weekend, and even some things this morning. So the amount
6 of time we've had to review the defensive information has been
7 very limited obviously. We've had more time to look at and
8 try and analyze the information the Plaintiffs submitted.

9 The Defendants do raise some points that -- some
10 questions that the Court itself had just based on what had
11 been filed previously, and that is, you know, what really is
12 the ordinance, the regulation, the law that the county adopted
13 that, you know, we're fussing over here this morning, and I
14 wanted just to pull up both of these documents, Plaintiffs
15 contend one is controlling, the Defendants generally contend
16 the other is controlling. And so let me just pull these up so
17 we can sort of go over what the Court's questions were.

18 I'm going to just guess this is Exhibit A. All
19 right. So here is -- wow, that's really bad. Let's see if I
20 can get this to a reasonable magnification. All right. So
21 here we have the order that I -- that the Plaintiffs complain
22 about that calls itself an order setting policy for the
23 prohibition of electioneering, and it -- I think its intent
24 was to prohibit electioneering. I mean that's what it says.

25 We couldn't -- the Court had difficulty trying to

1 figure out, well, where was the actual order because it -- the
2 order is really two paragraphs. One it orders -- it claimed
3 that it's ordering -- it really doesn't -- it just described
4 some property, there's really no order that's in -- it just
5 sort of says that the County of Starr owned various pieces of
6 property, it goes on to describe them, the courthouse annex,
7 Justice of the Peace building, and various other buildings,
8 there are associated parking areas that serve to carry on
9 ordinary county business. So that's not really an order. We
10 would all agree with that, it doesn't order anything.

11 So the next paragraph I think comes closer and it
12 says that the County of Starr desires to regulate the time,
13 place and manner of electioneering, blah, blah, blah, blah,
14 blah, desires to regulate at these particular places and
15 there's some maps attached to this document. But it
16 doesn't -- there -- it never -- then it says, I would think,
17 therefore it hereby ordered that electioneering is prohibited
18 or you cannot come on to these properties in an election year.

19 You know, I couldn't ever find where the prohibition
20 was, what they were really doing with this ordinance. It
21 was -- either it was poorly written, I think everyone would
22 concede that it was very poorly written because I think the
23 intent was that it so regulate, but I couldn't see that it did
24 because it then criminalizes behavior that is the subject of
25 this order, but I couldn't find a rule anywhere in the order

1 that had been adopted. I just had trouble with that. I
2 wanted to hear some explanation, did I miss something. But,
3 you know, it -- how is it the Plaintiffs read this that
4 there's an actual prohibition, because I saw two paragraphs
5 under the order, one describes some property, the other
6 describes desire of the County.

7 And again, this is usually sort of preamble
8 language, we desire to have a safer community, we desire to
9 restrict crime or -- and so here again the County desires to
10 regulate the manner of electioneering and I therefore expected
11 them then to do so in some kind of an order somewhere, but I
12 didn't -- I could never see the order.

13 Ms. Moreno, you want to elaborate or comment on that
14 or explain?

15 MS. MORENO: Yes, thank you, Your Honor. The order
16 bans electioneering "in or on property" --

17 THE COURT: Where does it say that, where does it
18 say it's prohibited? I mean unless -- I mean this is somewhat
19 a function of grammar. The County of Starr -- where is the
20 verb in that sentence?

21 MS. MORENO: The County of Starr --

22 THE COURT: Okay. That's the subject of the
23 sentence.

24 MS. MORENO: -- desires to regulate --

25 THE COURT: Desire, that's the verb.

1 MS. MORENO: -- by prohibiting --

2 THE COURT: That's the manner, that's a dependent
3 clause.

4 MS. MORENO: -- by prohibiting --

5 THE COURT: That's not a verb. They're not
6 prohibiting. Right? That's by prohibiting, this is a
7 dependent clause that describes how they desire to do
8 something.

9 MS. MORENO: -- by prohibiting during -- on
10 county --

11 THE COURT: Will you --

12 MS. MORENO: -- property --

13 THE COURT: -- disagree with that or not?

14 MS. MORENO: We -- I --

15 THE COURT: It doesn't prohibit. I mean language is
16 important, grammar is important. I just didn't --

17 MS. MORENO: Your Honor, we would agree with you
18 that the order is poorly written.

19 THE COURT: Yes.

20 MS. MORENO: But we offer our best interpretation
21 and we read the order as prohibiting on all county property
22 electioneering, and more importantly, Your Honor, we seek to
23 present evidence here today on how it's being enforced so --

24 THE COURT: Okay. Well, that's -- then actually we
25 get to that, but on its -- I don't see that this order

1 prohibits anything. Now if the County is out there doing some
2 things that are unconstitutional, then we can move on to visit
3 about that. But I'm having trouble with this order as not
4 really ordering anything is what I'm having trouble with.

5 Does anybody else want to weigh in? Is my reading
6 of it contrary, just basic grammar? Mr. Fonseca --

7 MR. FONSECA: Yes, Judge.

8 THE COURT: -- our Notre Dame graduate who can --

9 (Laughter.)

10 THE COURT: -- illuminate, and also a grammarian, I
11 know by personal experience. So, Mr. Fonseca, what -- is the
12 County's position is no, even though it's poorly written,
13 really the intent is to prohibit electioneering during any
14 voting period, we just didn't draft it very well, but this is
15 the way we're going to enforce it?

16 MR. FONSECA: Your Honor, it was followed up by the
17 use policy and it subsumed this order for the desire of
18 regulating what was being done on the properties.

19 THE COURT: Okay.

20 MR. FONSECA: It really narrows down --

21 THE COURT: What was the time period between this
22 order and the final order on the use of county property?

23 MR. FONSECA: It was about a month ago.

24 THE COURT: About a month. Okay. All right. So
25 the County's position also is that this particular simply sets

1 forth sort of policy statement of what the county desires to
2 do and then a month later they actually implemented these
3 desires in the way that's set forth in the facility use order?

4 MR. FONSECA: That is correct, Your Honor. The
5 controlling policy for Starr County is the use policy, which
6 is Exhibit 3 to Plaintiff's application. And it addresses
7 specifically different complaints that the Plaintiffs have as
8 to how the policy is actually enforced.

9 THE COURT: About how the policy is being enforced?
10 Because -- I mean I just read an affidavit where somebody had
11 a car parked in the parking lot in a lawful manner, even under
12 the County's building and property use policy, that had a
13 bumper sticker and was required to cover that bumper sticker.
14 I mean that was in one for the affidavits I read. Can you
15 explain why that would happen? Because you would agree, it's
16 permitted by the building and property use policy, but it's
17 one of those things that's desired to be prohibited in this
18 county order that we have here on the document projector.

19 MR. FONSECA: That is correct, Judge. That is not
20 the Starr County policy. If it was done, it was done
21 incorrectly. We don't have -- I don't have -- I don't know
22 who it was other than the Plaintiff who was saying that. All
23 I've seen is the affidavit, I haven't seen any other
24 complaints in the last month or so --

25 THE COURT: Okay.

1 MR. FONSECA: -- that the policy's actually been in
2 effect. And that's part of what we're arguing today is that
3 this case is not ripe --

4 THE COURT: All right. So let's get to that. But
5 so do you all want to put on some evidence about whether the
6 way the County policies, whether it's the building and
7 property use policy or whether it's a misinterpretation of
8 this order --

9 MS. MORENO: Yes, Your Honor. Regardless of --

10 THE COURT: -- what's the date of this order, this
11 order of January 8, 2018, what's the practical effect of it,
12 or how it's been implemented?

13 MS. MORENO: Yes. Thank you, Your Honor.
14 Regardless of the fact that it is poorly written, we do --
15 Plaintiffs do understand that the County interprets this as an
16 order as stated multiple times in the order itself, but we
17 would like to put on some evidence about how the order's being
18 interpreted.

19 THE COURT: All right. Do you want to do that by
20 witness, by affidavit, by proffer, by witness?

21 MS. MORENO: By witness, Your Honor.

22 THE COURT: All right. So, Ms. Avila, you want
23 to --

24 MS. AVILA: Yes, Your Honor. Before I call the
25 witness to the stand, we presented some exhibits to defense

1 counsel and we have not heard from them on objections, but we
2 (indiscernible) for the addition of the (indiscernible).

3 THE COURT: For purposes of this hearing? I mean I
4 assume they're all authentic?

5 MS. LEEDS: Well, Your Honor, we really don't know.
6 We got the eight on Friday and then this morning I was given
7 an amended witness list, and do not really know even the
8 context of some of these names. I mean for purposes of
9 today's hearing we don't really have a problem, for purposes
10 of some other hearing we might.

11 THE COURT: Okay. So you would just like to reserve
12 your objections to these documents, and I'll admit them for my
13 consideration at this time. This is 1 through 16?

14 MS. AVILA: One through sixteen, Your Honor. One
15 through fifteen are paper copies and 16 is pin drive of the
16 video.

17 THE COURT: All right. So I'm going to admit 1
18 through 16, objections reserved for a later time, and again, I
19 also may have questions about some of them, and I'm going to
20 vouch for -- Ms. Avila, I assume you're going to vouch for
21 their authenticity, that these are the actual documents that
22 they purport to be?

23 MS. AVILA: That's correct, Your Honor.

24 (Plaintiff's Exhibits 1 through 16 received into
25 evidence.)

1 THE COURT: Okay. Then you may proceed then.

2 MS. LEEDS: Your Honor, may I just --

3 THE COURT: Yes, ma'am.

4 MS. LEEDS: -- clarify one thing?

5 THE COURT: Sure.

6 MS. LEEDS: Mr. Fonseca was talking about how the
7 order is subsumed by the use code --

8 THE COURT: Right.

9 MS. LEEDS: -- and the one issue of the parking
10 with -- or moving a car with a bumper sticker, that has
11 clearly been disavowed. That occurred -- somebody jumped the
12 gun, as soon as the order came out and asked some people to
13 move, but that is specifically allowed --

14 THE COURT: Right. I saw that.

15 MS. LEEDS: -- in the order and the use policy.

16 THE COURT: So the County's position is that an
17 employee who didn't understand what the law was --

18 MS. LEEDS: Yes.

19 THE COURT: -- did something on one isolated
20 occasion.

21 MS. LEEDS: Yes, that one day.

22 THE COURT: And since --

23 MS. LEEDS: And they were corrected.

24 THE COURT: All right. So we'll see about that I
25 guess.

1 All right. So, Ms. Avila, who is your first
2 witness?

3 MS. AVILA: Your Honor, Plaintiffs call Hilda
4 Gonzalez Garza.

5 THE COURT: All right. So, Ms. Gonzalez Garza, if
6 you would come step forward. I do have her affidavit, I don't
7 really need -- are we just going to regurgitate her affidavit
8 or is there more to this?

9 MS. AVILA: I am going to walk her through some of
10 the more recent and important --

11 THE COURT: Okay.

12 MS. AVILA: -- issues.

13 THE COURT: Sure. All right. If you could step
14 forward I can have the oath administered to you before you
15 testify.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: If you'd raise your right hand, please.

18 (Witness sworn.)

19 THE COURT: All right. You can be seated over here
20 in the witness stand.

21 MS. AVILA: Your Honor, can I ask that you turn on
22 the Elmo for the --

23 THE COURT: Yes. If I can get the right button
24 here. Okay. Got it. Right? That's the right one? Okay.
25 All right. So you can use the document projector now.

1 MS. AVILA: Okay.

2 DIRECT EXAMINATION OF HILDA GONZALEZ GARZA

3 BY MS. AVILA:

4 Q Good morning, Ms. Garza.

5 A Good morning.

6 Q Can you please state your name for the Record?

7 A My names is Hilda Gonzalez Garza.

8 Q In which county do you reside?

9 A In Starr County.

10 Q And what do you do for a living?

11 A I'm an attorney.

12 Q In this 2018 election cycle are you running for any type
13 of public office?

14 A Yes, I am, I'm running for Precinct Chair for Precinct
15 Number 10 for the Democratic Party.

16 Q Would that be in Starr County?

17 A Yes, it is in Starr County.

18 Q And would this be for the primary election or for the
19 general election?

20 A The primary election.

21 Q Now when is the early voting period for the March 2018
22 primaries?

23 A It's from February 20 through March 2.

24 Q So the early voting period begun the last Tuesday. Is
25 that correct?

1 A That's correct.

2 Q Since that Tuesday have you engaged in any electioneering
3 on County property?

4 A Yes, I did.

5 Q And when was that?

6 A That was on February 20, which was the first day, and on
7 Saturday, February 24.

8 Q That would be this past Saturday. Correct?

9 A That's correct.

10 Q Now let's talk first about February 20. Where did you
11 attempt to electioneer that day?

12 A At the Starr County courthouse.

13 Q And when you arrived what did you see?

14 A I saw my friend rushing to her vehicle to cover a bumper
15 sticker or she needed to move her vehicle.

16 Q And what was your understanding of why she had to move
17 her vehicle?

18 A She was told by the election director that she needed to
19 move the vehicle or cover the bumper sticker.

20 THE COURT: Now how do you know that? It seems like
21 we -- did you hear this conversation?

22 THE WITNESS: She told me that, Your Honor.

23 THE COURT: So this is hearsay. Okay. And so
24 that's all you know is what some lady told you, a friend of
25 yours told you had happened.

1 THE WITNESS: While I was there at the parking lot,
2 yes, Your Honor.

3 THE COURT: All right. You didn't hear any of this
4 conversation yourself?

5 THE WITNESS: Not with the director, no, sir.

6 THE COURT: Okay. So let's talk about what you have
7 personal knowledge of. All right.

8 THE WITNESS: Okay.

9 THE COURT: Please continued.

10 BY MS. AVILA:

11 Q Who else did you see that day?

12 A I saw the Justice of the Peace.

13 Q Now, Ms. Garza, can you please turn to Tab 11 on the
14 binder you have in front of you?

15 THE COURT: Wait, I'm sorry, you sort of left -- you
16 saw the Justice of the Peace, what happened? They gave her a
17 ticket or something and you went to -- I mean what's the
18 relevance of that?

19 THE WITNESS: Your Honor, I was there in the middle
20 of the parking lot and the Justice of the Peace asked me for
21 some help.

22 THE COURT: Okay.

23 THE WITNESS: So that's when he had some legal sized
24 paper and some tape and he had -- I was helping him cover up
25 where he was announcing that he was running as a candidate.

1 THE COURT: All right. Okay.

2 BY MS. AVILA:

3 Q Ms. Garza, can you turn to Tab 11 in the binder you have
4 in front of you.

5 A Yes.

6 Q Do you recognize this photograph?

7 A Yes.

8 Q And who are the people in this photo?

9 A That's the Justice of the Peace and that's myself.

10 MS. AVILA: Your Honor, I represent to you that
11 these are screenshots from the video that we provided as
12 Exhibit 16 in the flash drive.

13 THE COURT: All right. Thank you.

14 BY MS. AVILA:

15 Q When was this photograph taken?

16 A That was on February 20 after I had spoken to that first
17 employee and now to the Justice of the Peace.

18 Q And when you say this first employee, who are you
19 referring to?

20 A I'm referring to Ms. Gonzalez.

21 Q Was that your friend that you just mentioned?

22 A Yes, that was my classmate, a friend of mine.

23 Q Where exactly were you standing here helping the Justice
24 of the Peace?

25 A That's on the second portion, or the second part of the

1 parking lot behind the courthouse.

2 Q Do you know the Justice of the Peace personally?

3 A Yes.

4 Q Do you know whether the Justice of the Peace is an
5 employee at the courthouse?

6 A Yes, his office is located there at the courthouse, and,
7 yes, he is an employee.

8 Q And what is your understanding of why he was at the
9 courthouse that day?

10 A He was more likely also working and campaigning.

11 Q Okay. And can you explain to the Court what exactly you
12 were doing in this photo?

13 A I was -- he advised me that he needed to cover up the
14 portion that indicated that he was campaigning for the Justice
15 of the Peace Place Number 4 that he was seeking re-election
16 for.

17 Q Ms. Garza, do you have any type of signage on your
18 vehicle?

19 A Yes, I do.

20 Q And what kind of signage do you have?

21 A I have bumper stickers, political bumper stickers.

22 Q What do you mean by political bumper stickers?

23 A I have stickers supporting the Democratic Party and I
24 have stickers supporting two of the candidates that I'm
25 supporting in this March election.

1 Q So what did you do after you helped the Justice of the
2 Peace cover his sign?

3 A I pretty much left the parking lot at that point.

4 Q And why did you leave?

5 A At that point there was a little bit of chaos and I
6 feared that I might be arrested.

7 Q And what do you mean by a little bit of chaos?

8 A Well, everybody was asked to cover up signage or bumper
9 stickers that involved campaign materials and my friend was
10 rushing to move her car out of the parking lot.

11 Q When you saw your friend to go -- you mentioned that she
12 rushed to her car, where were you standing?

13 A I was pretty much in the middle portion, if you look at
14 Plaintiff's Exhibit Number 11 I was walking a little bit
15 behind those vehicles when I saw my friend.

16 Q Is this beyond the 100-foot perimeter?

17 A Yes, it is.

18 Q And what does your friend with the bumper stickers do for
19 a living?

20 A She works at the courthouse.

21 Q Is that where she parks regularly?

22 A Yes.

23 Q Now you mentioned that you were there only for a couple
24 of minutes. How long did you intend originally to stay at the
25 courthouse? I intended to stay a little bit longer there to

1 campaign.

2 Q And if you had stayed, what kinds of activities would you
3 have --

4 A I would have distributed sample ballots, I also would
5 have reminded some of the voters also to vote on the back
6 portion of the ballot that talked about the 12 propositions
7 that the Democratic Party was supporting. I also would have
8 passed out some bumper stickers and I also had in my
9 possession the Constitution of the United States both in
10 English and Spanish.

11 Q And where would you have engaged in these activities?

12 A I would have done that in the back of the parking lot.

13 Q Is that beyond the 100-foot perimeter?

14 A Yes.

15 Q Now let's talk about the more recent events on February
16 24. You mentioned that you attempted to electioneer as well
17 on Saturday. Where exactly did you attempt to electioneer?

18 A I was on the sidewalk --

19 THE COURT: Could we finish up with -- let's finish
20 up with the courthouse first. Are we going to move on to
21 another property or are we --

22 THE WITNESS: No, it's the same property.

23 THE COURT: It's the courthouse. Okay.

24 THE WITNESS: Yes, I was at -- on Saturday the only
25 polling location was the courthouse. So I was on the sidewalk

1 and I had one of the T-shirts of one of the candidates.

2 BY MS. AVILA:

3 Q Okay. When you arrived did you speak to anyone?

4 A Yes, I had spoken to that same candidate that I had a T-
5 shirt on.

6 Q And where were you standing when you were speaking to
7 this candidate?

8 A We were standing outside of the parking lot at one of the
9 campsites.

10 THE COURT: Do you have a map?

11 MS. AVILA: Yes, Your Honor.

12 THE COURT: If not, I can pull one up. So you're
13 beyond the 100 feet of the entrance of the courthouse,
14 beyond --

15 THE WITNESS: It would have been the back portion of
16 the courthouse, Your Honor.

17 THE COURT: But to comply with the 100 foot rule do
18 you measure that from the front door or the back door, the
19 polling place? I assume just the door --

20 THE WITNESS: They typically measure it from the
21 back door, Your Honor.

22 THE COURT: All right. So were you outside the 100
23 feet or --

24 THE WITNESS: I was outside the 100 feet, Your
25 Honor. It is -- if you can see the parking lot --

1 THE COURT: I can.

2 THE WITNESS: -- it has two divisions. You can see
3 the middle one -- there's like a middle --

4 THE COURT: Sure.

5 THE WITNESS: -- island.

6 THE COURT: Right. I see that.

7 THE WITNESS: Okay. I would have been behind that
8 little island towards the back.

9 THE COURT: I'm familiar with a lot of polling
10 places that paint the -- someone with the city or someone will
11 come in and paint a red line on the ground or otherwise
12 designate the area. Is that -- is there anything --

13 THE WITNESS: Your Honor --

14 THE COURT: -- any marker line like that at the
15 courthouse?

16 THE WITNESS: Actually, Your Honor, that morning at
17 nine o'clock I had to call the election director and advise
18 them that the presiding judge had not placed the cone --

19 THE COURT: Okay.

20 THE WITNESS: -- to indicate the 100 foot marker.
21 And when I spoke to the election director's office, they told
22 me that they would advise the presiding judge of that. So
23 this is the only site that I know of that does not do that
24 semi circle. The other locations that I've been to, they do
25 mark it with some paint and then they put like a cone or --

1 THE COURT: Some signage also.

2 THE WITNESS: -- a subject -- a signage in the
3 middle that indicates that that's the boundary so to speak.

4 THE COURT: All right.

5 MS. AVILA: Your Honor, can I approach the witness
6 to give her a clicker?

7 THE COURT: Sure. I see that the middle
8 intersecting --

9 THE WITNESS: The only -- right there, Your Honor,
10 is the signage that they put in the middle, and I was
11 electioneering around this area, this back portion.

12 THE COURT: All right. You may continue, Ms. Avila.
13 BY MS. AVILA:

14 Q So you mentioned that you met your friend who was
15 campaigning. What did you understand she was doing at the
16 courthouse that day?

17 A She was just working. I did ask her if she had taken the
18 day off to politick for her brother, but she indicated that
19 she was working that day.

20 Q And you mentioned that you were also --

21 THE COURT: And this is the Saturday of just a week
22 ago --

23 THE WITNESS: No, that --

24 THE COURT: I'm sorry.

25 THE WITNESS: -- my friend, Your Honor, that was on

1 the first day of early voting and her vehicle was around this
2 area back here.

3 THE COURT: Okay.

4 THE WITNESS: And that's when I was entering from
5 over here on one of the side parking slots going into the
6 parking area.

7 THE COURT: Okay.

8 BY MS. AVILA:

9 Q So going back to the event on February 24, you mentioned
10 that you met with your friend who was a candidate.

11 A Yes.

12 Q What did you understand she was doing there?

13 A She was also politicking or trying to electioneer outside
14 the 100 feet, but she was told to leave the parking lot.

15 Q And do you know who told her this?

16 A My understanding is there was two deputies and they told
17 her to leave the parking lot because she was wearing one of
18 her campaign shirts

19 THE COURT: Okay. So you say my understanding, so
20 this is just what she told you?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: All right.

23 BY MS. AVILA:

24 Q Now you mentioned that you were also wearing a T-shirt.

25 A Yes, I was.

1 Q And what kind of T-shirt were you wearing?

2 A I was wearing a T-shirt endorsing the candidate that's
3 running for the 229th Judicial District.

4 Q Okay. And how long were you at the property that day?

5 A Well, I was -- I say for a couple of hours, I guess --
6 I'm sorry, around this area which was the campsite, but I did
7 approach the corner right here of the sidewalk.

8 Q So inside the perimeter of the actual county property how
9 long were you there on February 24?

10 A Maybe about 10 or 15 minutes.

11 Q Okay.

12 THE COURT: And now you're talking about the
13 sidewalk portion?

14 THE WITNESS: Yes, Your Honor, I was --

15 THE COURT: Okay. That you're pointing to which
16 is --

17 THE WITNESS: Right there, Your Honor, around that
18 area.

19 THE COURT: All right.

20 THE WITNESS: I was speaking to another candidate at
21 that area and she had her granddaughter and she placed her
22 granddaughter there to play in the grass area.

23 THE COURT: Okay. And this is the -- would be the
24 northwest corner of the lot upon which the courthouse sits?

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: All right. Just for the record.

2 BY MS. AVILA:

3 Q And is this beyond the 100 foot marker --

4 A Yes, it is.

5 Q -- she was standing?

6 A Yes, it is.

7 Q Now you mentioned that you only were there for about 10
8 minutes. Is that how long you intended to stay at the
9 courthouse?

10 A Not at that particular location, no.

11 Q Why did you decide to leave?

12 A That's when I was approached by two of the deputies and I
13 was told to leave. They had pointed to my T-shirt, so I
14 needed to leave.

15 Q So what is your understanding of why they asked you to
16 leave the property?

17 A Because I had the slogan, the campaign slogan that I was
18 supporting one of the candidates.

19 THE COURT: You say deputies. These were Starr
20 County Sheriffs deputies?

21 THE WITNESS: Yes, Your Honor, they were Starr
22 County Sheriffs deputies. They were dressed in uniform.

23 THE COURT: And did you get their names, or are you
24 familiar with who they were?

25 THE WITNESS: They're normally the staff that works

1 there in the courthouse, Your Honor. I don't know --

2 THE COURT: Okay.

3 THE WITNESS: -- the gentleman's name, but he's a
4 red head so --

5 THE COURT: Okay. But these are people are
6 positioned just on a daily basis to be at the courthouse
7 providing security?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Okay. And so -- and that was again this
10 past Saturday, just a couple of days ago that this incident
11 happened.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: All right.

14 BY MS. AVILA:

15 Q Ms. Garza, for approximately how many years have you
16 engaged in electioneering in Starr County?

17 A At least six years.

18 Q And based on this experience can you explain to the Court
19 where the typical -- where do people typically electioneer on
20 county property?

21 A Typically electioneering, Your Honor, would be the tents
22 and the barbeques and tables, signage would be on the back
23 portion of the parking lot, this back portion.

24 Q And what is your understanding of why electioneering
25 takes place at the back of the courthouse?

1 A Because that's beyond the 100 feet.

2 Q Where do voters come in through to vote at the polling
3 place?

4 A They come in through the back and they also come in
5 through the front.

6 Q So if a voter wanted to come in through the front, they
7 could do that, and then walk out through the back door.

8 A Yes, they could.

9 THE COURT: All right.

10 BY MS. AVILA:

11 Q Is there additional parking for voters aside from the
12 100 -- beyond the 100-foot perimeter where you just described
13 the tents and the barbeques pits are.

14 A Yes, there is, there's parking over here, there's parking
15 in the front, and there's parking in the side, and the side
16 over here as well.

17 THE COURT: Is any of that county property,
18 especially the stuff to the right of the courthouse in this
19 diagram, that big -- what looks like a big parking lot is
20 that --

21 THE WITNESS: That is property, Your Honor, that
22 goes normally for the Casey Hall, but employees do use that
23 parking area and other individuals.

24 THE COURT: So it's county-owned property that
25 they --

1 THE WITNESS: I don't believe that -- I really don't
2 know the status of that property, Your Honor.

3 THE COURT: Okay.

4 THE WITNESS: I do know that we -- as an employee
5 and as a person that frequents the courthouse I have on
6 occasion parked there without any incident.

7 THE COURT: Is it paved, I can't really tell?

8 THE WITNESS: Yes, it is, Your Honor. That part is
9 paved.

10 THE COURT: Okay. You pointed to the area where
11 there's electioneering, you said campsites, barbeques, tents,
12 and that is in an area that is for parking as well, and
13 actually is striped for parking as well. You would agree with
14 that?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: I just want the record to be clear that
17 it's marked parking spaces where you're indicating that the
18 tents and the barbecue pits were placed in the past for
19 electioneering.

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: All right. You may proceed, Ms. Avila.

22 BY MS. AVILA:

23 Q So if -- just to clarify, if a voter wanted to walk into
24 the poll, they could do that without going through the tents
25 and the electioneering that occurs in the back of the

1 courthouse?

2 A Yes. Typically in this particular site voters, Your
3 Honor, that do not want to engage with candidates go in
4 through the front. And they vote because the back portion
5 over here, there's a room, that's Commissioners Court, that's
6 normally where the voting booths are placed.

7 THE COURT: Okay.

8 THE WITNESS: And so those voters can go through the
9 front and then if they decide that they want to engage the
10 candidates or pick up a plate of food or just chit chat, then
11 they can go through the back. Or if they decide that they do
12 not want to engage with the candidates in any way, shape or
13 form, they just come straight out, they just vote and come out
14 the front door as well.

15 THE COURT: Is that true even on a Saturday that the
16 front door is opened?

17 THE WITNESS: Your Honor, I did not check the front
18 door, I know that in the past it has been closed, the front
19 door and they've only had the back portion open on Saturdays.

20 THE COURT: Okay. But obviously on a normal week
21 day the front door is open for the normal business of the
22 courthouse.

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: Okay.

25 BY MS. AVILA:

1 Q And on normal weekday do voters have to go through the
2 barbecue pits and the tents that you just described in order
3 to go vote?

4 THE COURT: She said no. You can -- next question.

5 BY MS. AVILA:

6 Q I just want to go back to the event on February 20 for a
7 couple of clarifying questions, Ms. Garza.

8 A Yes.

9 Q Where does the Justice of the Peace work?

10 A He works at the courthouse.

11 Q And where does he park for work?

12 A He normally parks back here.

13 Q So that would be beyond the 100-foot perimeter?

14 A Yes, that's correct.

15 THE COURT: I couldn't tell but in that picture
16 where you're covering up his sign on the side of his truck,
17 where was his truck actually parked on that day?

18 THE WITNESS: Your Honor, it would have been close
19 to -- there's a median right here for --

20 THE COURT: Okay. Sure, I see that in the --

21 THE WITNESS: Okay. And it would have been a little
22 bit around this area back here.

23 THE COURT: Okay. Got it.

24 THE WITNESS: It would have been maybe the
25 parking slot -- the first or the second one close to that

1 median.

2 BY MS. AVILA:

3 Q So in the back of the courthouse, and I'm sorry, we drew
4 a line there, I don't suppose -- I don't know if we'll take
5 that.

6 THE COURT: I think I can undo that for you. There
7 we go.

8 BY MS. AVILA:

9 Q In the back of the courthouse where do voters typically
10 park?

11 A Voters will park here in this area, typically -- and this
12 was before the ban -- they would come in and vote here and
13 they would also park over here, park in the front, and that's
14 basically where they'd park.

15 Q Okay. And what about the tents and the barbecue pits,
16 where did they --

17 A The tents would be on the back portion, the second part
18 of the parking lot. That's typically where they would be at.
19 Right now they're not -- there are -- none of them are back
20 there.

21 Q Ms. Garza, can you turn to Exhibit 1 in the binder you
22 have in front of you. This is marked as Plaintiff's Exhibit
23 Number 1.

24 A Yes.

25 Q Do you recognize this document?

1 A Yes.

2 Q And what is it?

3 A It's an order prohibiting electioneering.

4 Q Were you present at the meeting when this order was
5 adopted?

6 A Yes, I was.

7 Q In what capacity?

8 A I was a concerned citizen.

9 Q Can you please turn to Page 12 of the order?

10 A Yes.

11 Q All right. And what is this looking like?

12 A This is a map -- or a picture of the Starr County Annex.

13 Q Now as a candidate running for election in the primaries,
14 are you familiar with the different polling locations around
15 Starr County?

16 A Yes, I am.

17 Q Is this property here a polling location?

18 A No, it's not.

19 Q Is it a polling location for early voting?

20 A No, it's not.

21 Q Is it a polling location for the general election?

22 A No.

23 Q Now can you turn to Page 14 of that same document?

24 A Yes.

25 Q And can you tell us what this is?

1 A This is La Victoria Community Center, it's also the site
2 of the park, this is a polling location for election day.

3 Q Is it a polling location for early voting?

4 A No, it's not.

5 Q Do you -- are you familiar with the various distances
6 from the doors of the buildings to the edges of the county
7 properties?

8 A Yes.

9 Q And what is your understanding?

10 A On this particular polling location the distance from the
11 entrance, which would be the polling location's right, the
12 door would be there, and there's only one entrance that I know
13 of, and the entrance to the property would be here. That's
14 approximately about 468 feet.

15 Q And what is this understanding based on?

16 A The fact that I measured it.

17 Q All right. Did you measure any other properties --

18 A Yes, I did.

19 Q Which ones did you measure?

20 A I measured also the courthouse.

21 Q Okay. So let me just find it on the -- and when did you
22 find out about the distance from the door of the building to
23 the edge of the property?

24 A The door of the building would be somewhere around here,
25 going all the way to the edge would have been approximately

1 153 feet.

2 Q Did you measure any other properties, let's say --

3 A Yes, I did. I also measured La Rosita.

4 Q And what was the distance from the door of that polling
5 location to the edge of the county property?

6 A That was 155 feet.

7 Q Were those the only properties that you measured?

8 A No, I also measured the one in Encineso (phonetic).

9 Q And what was the distance from the door to the edge of
10 the county property in that location?

11 A That one was from the door to the -- pretty much in front
12 of the gate, and that was approximately 232 feet.

13 THE COURT: So is the county courthouse the only
14 early voting location?

15 THE WITNESS: Excuse me, Your Honor?

16 THE COURT: Is the county courthouse the only early
17 voting location?

18 THE WITNESS: No, Your Honor, those four locations
19 are our early voting locations.

20 THE COURT: La Victoria, La Placenta --

21 THE WITNESS: La Rosita, Your Honor, the courthouse,
22 Encineso (phonetic) --

23 THE COURT: Right.

24 THE WITNESS: -- and, gee, I'm trying to remember
25 the --

1 MS. AVILA: Your Honor, it's -- if I may, it's on
2 your binder under Tab 3.

3 THE COURT: All right.

4 MS. AVILA: It's Plaintiffs' Exhibit Number 3. I
5 think this is --

6 THE WITNESS: And the Roma Community Center, Your
7 Honor.

8 THE COURT: That's --

9 THE WITNESS: But that's not county property, that's
10 city property.

11 THE COURT: Okay.

12 BY MS. AVILA:

13 Q Now I want to go back to the bumper stickers on your car.
14 What type of county property do you conduct your regular
15 business as an attorney?

16 A What vehicle or --

17 Q To what county properties do you go on your regular
18 business as an attorney?

19 A Okay. Well, I go to the courthouse, I go to the
20 sheriff's office, I'll go to the annex, I'll go also to some
21 of the Commissioners' offices, and on occasion I'll go the
22 probation office.

23 Q And what vehicle do you drive to all of these locations
24 that you just --

25 A The vehicle that I'm driving at this point in time that

1 has the bumper stickers.

2 Q Do you take off or cover your bumper stickers when you
3 visit any of these properties?

4 A No, I do not.

5 Q How do you feel about visiting all of these properties as
6 an attorney?

7 A Well, there's a little bit of apprehension to go into
8 some of these locations because you can be arrested.

9 MS. AVILA: Can I have a minute, Your Honor?

10 THE COURT: You may.

11 (Pause in proceedings.)

12 BY MS. AVILA:

13 Q Ms. Garza, based on your experience with electioneering
14 what have you observed about how the county enforced the 100
15 perimeter around the polling sites?

16 A At the courthouse they sometimes do not abide by the
17 regulations.

18 Q And what do you mean by that?

19 A Back in March of 2016 at that point in time the tents had
20 already been set up and some signage or political signs had
21 already been set up within the 100-foot perimeter.

22 Q Now did you personally electioneer on March of 2016?

23 A Yes, I did.

24 Q And did you electioneer within the 100-foot perimeter?

25 A I did not electioneer within the 100 feet, and I try not

1 to electioneer within the 100 feet.

2 Q Now did you observe any type of voter intimidation within
3 the 100-foot perimeter in the March 2016 primaries?

4 A What happened was that basically we -- the candidates and
5 I guess the people that were electioneering, the rule had not
6 been followed. We were supposed to be beyond the 100-foot,
7 but because the tents had been set up before the presiding
8 judge or the election director could mark the area, it was
9 determined at that point in time that we were not going to
10 abide by the 100-foot marker.

11 Q So what were you asked to do in relation to the 100-foot
12 perimeter?

13 A Just to kind of stay away from that area, but it was less
14 than 100 feet at that point in time.

15 Q And to go back to my question, did you observe any type
16 of voter intimidation within the 100-foot perimeter?

17 A Not intimidation, but the fact that we were already
18 encroaching into the 100 feet there was candidates that were
19 roaming around that area, so I would say that there was
20 some -- I didn't observe any intimidation myself, but I
21 just -- what I'm saying is that by simply encroaching that was
22 a violation.

23 Q And what about outside the 100-foot perimeter, did you
24 observe any type of voter intimidation?

25 A No, not voter intimidation.

1 Q Did you ever witness any damage to voting machines?

2 A At the March 26 primary we had some issues with voting
3 machines, we had about three voting machines that broke down.
4 So that one I was a candidate so the candidates were brought
5 in to the voting site and were told that those machines had
6 broken down so they were sealed off and taped up, and -- until
7 new machines came in. So that was an issue.

8 Q Did the damage have anything to do with electioneering?

9 A No, I don't think it had anything to do with
10 electioneering.

11 Q Are you aware of any altercations that have occurred at
12 the county courthouse?

13 A I had heard that there was an altercation back in 2016 in
14 the bathroom with some supporters arguing.

15 Q And this was within the 100-foot perimeter?

16 A Yes.

17 Q Have you -- did you personally observe those
18 altercations?

19 A No, I did not personally see those altercations, no.

20 Q How did you come to know about those?

21 A From individuals that were there at the campsite.

22 Q And have you personally observed any voter harassment
23 within the 100-foot perimeter?

24 A Not voter harassment, no.

25 Q Ms. Garza, can you turn to Exhibit 5 in your binder,

1 please?

2 A Yes.

3 Q Do you recognize this document?

4 A Yes, I do.

5 Q And what is it?

6 A This is an email that I sent to Ms. Christina Atkins
7 who's the legal director of the Elections Division with the
8 Secretary of State, with the Texas Secretary of State.

9 Q And when did you send this email?

10 A I sent this email after Commissioner's Court on Monday,
11 February 12.

12 Q And why did you contact Ms. Atkins?

13 A I contacted Ms. Atkins because of the fact that the
14 resolution had passed, and also a building use policy
15 provision that was passed on that particular day.

16 Q And generally can you tell us what did you communicate
17 with Ms. Atkins?

18 A My concern was whether the resolution and the building
19 policy conflicted with the Texas Election Code 61.003.

20 Q And what did Ms. Atkins respond to you?

21 A She did advise that she felt that there was a conflict.

22 Q Do you know whether the Secretary of State has stated any
23 of these positions anywhere else?

24 A Yes, they publicly stated these I believe in *The Monitor*
25 and also on a news story that was -- ran or that was posted in

1 the KRGB News.

2 Q Now what do you know about Defendants' response to the
3 Secretary of State's position on polling -- position on the
4 legality of the ban?

5 A My understanding that the Defendants' response is that
6 they believe that they will continue to have this ban until
7 there's a lawsuit that is filed.

8 Q And what is this understanding based on?

9 A It's based on a Facebook post that was posted by
10 Mr. Escobar on February 16. That would be Plaintiffs'
11 Exhibit Number 7.

12 Q Thank you. Can you please turn to Exhibit 15?

13 A Yes. This is the --

14 Q Do you recognize this document?

15 A Yes, I do.

16 Q And what is it?

17 A This is a news story from KRGB.

18 Q Now I want to draw your attention to the last paragraph
19 on this first page.

20 A Yes.

21 Q What do you understand from this is the Defendants'
22 intention to enforce the ban?

23 A Well, that they intended to enforce it and that if
24 anybody chose to challenge it, they would have to file a
25 lawsuit.

1 Q And just one last question, Ms. Garza. Do you believe
2 electioneering on county property is important?

3 A Yes, it is.

4 Q And why is that?

5 A Well, because that's when the voters are there in the
6 parking lot and if you're electioneering, you have sample
7 ballots, you have some ballots that are pre-filled and others
8 that are not. If there's a voter that approaches you and asks
9 you who you're supporting, you can indicate who you are
10 supporting, and state your position at that point in time.
11 And I also provide like I said bumper stickers and any
12 information that the voter might need, including if they are
13 not registered to vote or they'll even ask where do they need
14 to vote if for whatever reason they decided they don't want to
15 vote that day or they want to vote at a different location.

16 MS. AVILA: Thank you, Your Honor. I pass the
17 witness.

18 THE COURT: Any questions, Ms. Leeds or Mr. Fonseca?

19 MS. LEEDS: Yes, Your Honor.

20 THE COURT: Or Mr. Alvarez.

21 CROSS-EXAMINATION OF HILDA GONZALEZ GARZA

22 BY MS. LEEDS:

23 Q Ms. Garza, you were at the meeting -- do you prefer
24 Gonzalez or Garza, I never know.

25 A Garza.

1 Q Okay.

2 A Garza is fine. My husband would prefer Garza, I can say
3 that.

4 Q You were at the meeting at which the use of property
5 policy was passed. Correct?

6 A That's correct.

7 Q And did you understand why that use of property policy --

8 MS. LEEDS: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MS. LEEDS:

11 Q -- actually did away with the ban that you are
12 complaining about to the extent that it conflicted with the
13 policy?

14 MS. AVILA: Objection, Your Honor, it calls for a
15 legal conclusion.

16 THE COURT: Well, what her understanding is, I mean
17 she is a candidate, a supporting candidate so her
18 understanding might be relevant. I'll allow the question.

19 THE WITNESS: May I see the document, Ms. Leeds?

20 BY MS. LEEDS:

21 Q Sure. Just a moment. It's Number 14 of the order.

22 MR. OLIVARES: It's Plaintiffs' Exhibit 2.

23 THE COURT: Yeah, god, I'm just trying to find a
24 date on it --

25 MR. OLIVARES: Okay.

1 THE COURT: -- so remind myself of the date this
2 policy was enacted because I don't see a date on it anywhere.

3 THE WITNESS: Your Honor, it was enacted on February
4 12 at that particular meeting.

5 THE COURT: February 12 was --

6 THE WITNESS: Of 2018, Your Honor.

7 THE COURT: Okay.

8 THE WITNESS: Which would have been the Monday
9 before the Tuesday election.

10 BY MS. LEEDS:

11 Q Can you see it okay?

12 A Yes, I can.

13 Q Okay. Would you read that, please?

14 A Yes, it has Cumulative all policies of the County of
15 Starr, Texas adopted or unadopted in conflict with the
16 provisions of this policy are hereby repealed and all of the
17 provisions not in conflict with provisions of this policy
18 shall remain in full force and effect.

19 Q What is your understanding as a lawyer what that means?

20 MS. AVILA: Your Honor, objection, calls for a legal
21 conclusion. She's not here to testify as an attorney.

22 THE COURT: Well, it just -- what's your
23 understanding, I mean it speaks for itself, and really I don't
24 know that her understanding is relevant, but as a lawyer I
25 don't think it's relevant, but I'll allow it as just a

1 candidate or someone electioneers what is your understanding?

2 THE WITNESS: Okay. Am I still being asked that
3 question, Your Honor, because she --

4 THE COURT: Just as a layperson.

5 THE WITNESS: -- changed the page.

6 THE COURT: Yeah, if you could go back so she can
7 see it --

8 MS. LEEDS: Yes.

9 THE COURT: -- Ms. Leeds?

10 BY MS. LEEDS:

11 Q It's Exhibit 4.3 of your complaint.

12 A Okay. Well --

13 Q Or application.

14 A -- actually, Ms. Leeds, that statement's a little
15 confusing, because then if you move your document a little bit
16 further on down, please --

17 Q Down or up?

18 A Oh, there you go. There's Provision Number 12, that says
19 that the Starr County electioneering policy as adopted on
20 January 5 by the Starr County Commissioners Court is hereby
21 incorporated into the Starr County building and property use
22 policy for all purposes.

23 Q Correct. And with Number 14 what does that do?

24 A It indicates that all policies the County of Starr
25 adopted or unadopted in conflict provisions of this policy are

1 hereby repealed. And all of the provisions not in conflict
2 with the provisions of this policy shall remain in full force
3 and effect.

4 Q So the policy rules.

5 A Yes.

6 Q Okay. Now if you go to Number 11 of the use of property
7 policy, what does that deal with?

8 A That deals with parking zones.

9 Q Okay. And it defines what can be parked in a parking
10 zone, does it not?

11 A Yes, it does.

12 Q In fact, on the next page in just to get quickly through
13 the bumper sticker issues, would you read Number 6?

14 A It indicates vehicles may display political signs
15 attached to the vehicles in accordance with the Texas Election
16 Code.

17 Q So bumper stickers are allowed pursuant to the policy.

18 A On this particular page I believe it is allowed.

19 However, if you go to -- I believe on Page 7 it talks about no
20 political signs or advertisements will be displayed on
21 historically restored areas.

22 Q Yes.

23 A Okay.

24 Q And what are historically restored areas?

25 A That would -- I'm assuming it would be in the courthouse,

1 ma'am, but I'm not sure.

2 Q You're not sure. You don't know that that is the
3 building of the courthouse?

4 A That would be the building --

5 Q Okay.

6 A -- but it also has parking zones, so that adds to the
7 confusion.

8 Q Ms. Garza, are you saying you don't understand that we
9 think the parking zone is part of the historical building?

10 A I believe they have them marked, Ms. Leeds, so that's
11 what I'm looking at.

12 Q Okay.

13 THE COURT: I'm understanding we're
14 misunderstanding, but that's her understanding.

15 MS. LEEDS: Okay.

16 THE WITNESS: Yes.

17 BY MS. LEEDS:

18 Q Now if you go back to Number 11 of the order, it says
19 that certain things are allowed in the parking zone but
20 certain kinds of things are not allowed in the parking area.
21 Correct?

22 A That's correct.

23 Q It says, Trailers, barbecue pits, chairs, tents,
24 recreational vehicles and the like.

25 A Yes, ma'am.

1 Q Would you agree with me that those things are not
2 vehicles?

3 THE COURT: Well, a recreation vehicle --

4 THE WITNESS: I'm sorry, but recreational vehicles
5 are vehicles.

6 BY MS. LEEDS:

7 Q A recreation vehicle I would agree, but it's rather
8 large, or a trailer. But a barbecue pit, chairs and tents are
9 not vehicles. Correct?

10 A Correct.

11 Q Okay. You also are well acquainted with the order of
12 which you complained that allows you to apply for a permit for
13 use.

14 A What page is that, Ms. Leeds?

15 Q Well, maybe that's the order.

16 THE COURT: No, it's not the order.

17 MS. LEEDS: The policy I mean.

18 THE COURT: It's the policy that you were just
19 looking at?

20 MS. LEEDS: Yes.

21 BY MS. LEEDS:

22 Q The use or property policy under Number 8 --

23 A Okay.

24 Q -- establishes regulations for use of space.

25 A Okay.

1 Q Are you acquainted with this section of the policy?

2 A Let me look at it, Ms. Leeds. Regulations for use of
3 space. Yes, ma'am, I'm looking at it.

4 Q Okay. Does that give you the option of applying for a
5 permit to do certain things?

6 THE COURT: I think you're meaning Number 4. You're
7 in the wrong area of the policy. I don't know if that's -- I
8 think this is what you're trying to get at, where people can
9 apply to use --

10 MS. LEEDS: Yes, I'm sorry, Your Honor.

11 BY MS. LEEDS:

12 Q Number 4 and 5, which is the application process.

13 A Okay.

14 Q In common areas that are not parking zones the county has
15 provided a system by which you can apply for a permit for
16 proper use. Correct?

17 A I believe so, Ms. Leeds.

18 Q Have you tried to apply for a permit?

19 A No, ma'am, but I did inquire on the 16th if there was
20 some permits available and I was informed that they did not
21 have a document or form so that you could apply for a permit.
22 So I did not do so.

23 Q Have you attempted after that point in time?

24 A No, ma'am, I have to.

25 Q Okay. So had not been denied the resolution that is

1 contained within the policy. Correct?

2 A I'm sorry?

3 Q You had not been denied the ability to resolve the
4 conflict you had with the policy until you actually asked for
5 a permit and were denied that.

6 A So you're saying that I needed to have a permit for
7 having a T-shirt on that has some political signage on it?

8 Q No, I'm talking about --

9 THE COURT: Can you be more specific in your --
10 yeah, your question's really vague, Ms. Leeds. I'm having a
11 hard time. Do you mean if she were to apply to have a tent in
12 the parking lot or if she was -- if she were to apply to stand
13 on the northwest corner of the building where two deputies
14 encountered her on Saturday? I mean can you be a little more
15 specific?

16 BY MS. LEEDS:

17 Q Yes, have you tried to apply, besides the 16th, have you
18 tried to apply for the use of any common area of Starr County?

19 A No, ma'am.

20 Q Okay. Is it your understanding that having a T-shirt on
21 is different from using a bumper sticker?

22 A It's still political speech, so by having a T-shirt on
23 it's still electioneering and so is having a bumper sticker.

24 Q I'm glad you said that. Would you turn to the statute,
25 61.003.

1 A Yes.

2 THE COURT: Does any of my materials --

3 MS. LEEDS: It should be -- it's --

4 THE COURT: Yeah, I have it. Sorry. Exhibit 5.

5 BY MS. LEEDS:

6 Q And, Ms. Garza, would you read what the definition of
7 electioneering is, please?

8 A I've gone through that temp -- hold on, Ms. Leeds, I'm
9 trying to find it. Here we go.

10 Q It's 44 --

11 A It was on Plaintiffs' Exhibit Number 5, so I'm looking
12 for that one.

13 Q Okay.

14 A Yes, ma'am.

15 Q What is electioneering?

16 A Includes -- excuse me, electioneering includes posting,
17 use or distribution of political signs or literature.

18 Q Okay. That doesn't include putting up a tent or a
19 barbecue pit, does it?

20 MS. AVILA: Objection, Your Honor, again, it calls
21 for a legal conclusion.

22 THE COURT: Can you answer it?

23 THE WITNESS: Your Honor, I know that there were
24 some signs, some tents have Vote For also on them, so it could
25 be electioneering material because candidates have their tents

1 that have, you know, 229th or the name of the candidate so.

2 THE COURT: Sure. But without -- if a tent, just a
3 plain vanilla --

4 THE WITNESS: If it would have been a plain
5 vanilla --

6 THE COURT: -- canopy with nothing on it, would
7 that be prohibited.

8 BY MS. LEEDS:

9 Q In a parking lot.

10 THE COURT: Or under this statute would that be
11 considered electioneering. Let's say whatever the local
12 elementary school PTA had tents in the parking lot, would that
13 be electioneering. Or the Girl Scouts were selling cookies
14 and had a tent, would that be electioneering.

15 THE WITNESS: I guess if they didn't have any
16 political signs, Your Honor, it wouldn't be.

17 THE COURT: All right. I mean --

18 MS. LEEDS: Well --

19 THE COURT: -- let's move along, we've --

20 BY MS. LEEDS:

21 Q Yeah, the question was is a tent included in the
22 definition?

23 THE COURT: Not necessarily, but could be.

24 MS. LEEDS: Okay.

25 THE COURT: If the tent had signage painted on the

1 side of the tent, it would be electioneering, if it doesn't,
2 it's blank, devoid of any signage endorsing a candidate or
3 party, then it would not be.

4 BY MS. LEEDS:

5 Q Would a tent conform with the use policy under what is
6 permitted in the parking zones?

7 MS. AVILA: Objection, Your Honor, it's vague. I'm
8 not sure what she's referring to.

9 MS. LEEDS: I'm referring to Number 11,
10 Subsection 4.

11 (Pause in proceedings.)

12 THE WITNESS: It looks like you're restricting
13 trailers and tents from the parking zones.

14 BY MS. LEEDS:

15 Q Right, because they're not vehicles. Right?

16 A Yes, ma'am.

17 Q You would agree with me?

18 A Yes.

19 Q You are also familiar with the Secretary of State's
20 Advisory 27 -- 2017-14, are you not?

21 A I haven't looked at it lately, Ms. Leeds.

22 Q Have you looked at the exhibits on your exhibit list?

23 A Let me see if I have this one.

24 (Pause in proceedings.)

25 BY MS. LEEDS:

1 Q Plaintiffs' 9.

2 A I'm sorry. Okay.

3 Q And on the second page there is a subsection regulating
4 electioneering outside the 100-foot marker.

5 A Okay.

6 Q All right. Now the Secretary of State has indicated that
7 reasonable regulations as to time, place and manner of
8 electioneering may be had and those include keeping sidewalks
9 and driveways clear for pedestrians and traffic. Correct?

10 A That's correct.

11 Q Okay. And that's outside the 100 feet.

12 A Yes.

13 Q When you talked to the individuals you spoke to at the
14 Secretary of State did you provide them with the use of
15 property policy?

16 A No, ma'am, because they had -- it had not been given to
17 me at that time.

18 Q Okay. So you do not know if the language that the policy
19 has in it actually solves the problems you have with the 100-
20 foot line because it's a proper -- well, would you agree that
21 a county can regulate the use of its property?

22 A Reasonably regulate, yes, ma'am.

23 Q Okay. Do you think it's proper for a county to make its
24 parking zones for parking only?

25 A Are you asking me to speculate at this time?

1 Q I'm asking if you think it's reasonable for a county to
2 designate its parking zones for parking --

3 A Yes.

4 Q -- only.

5 A Sure.

6 Q Okay. So it's not unreasonable that they exclude things
7 that are not vehicles for parking for business purposes on
8 their -- in their parking zones.

9 A That's correct.

10 Q If you're --

11 MS. LEEDS: Your Honor, can you give me a minute?

12 THE COURT: Uh-huh.

13 (Pause in proceedings.)

14 MS. LEEDS: Your Honor, we'll pass the witness.

15 THE COURT: Ms. Avila, is there anything else you'd
16 like to ask of your --

17 MS. AVILA: (Indiscernible), Your Honor.

18 THE COURT: You may.

19 THE COURT: So, Ms. Garza, I want to ask you a few
20 more questions about the incident this weekend.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: So you park there along the street, I
23 think you said on the west side of the courthouse and walked
24 on to the courthouse property to the sidewalk on the front of
25 the grassy area upon where the courthouse sits, and you were

1 encountered by two courthouse deputies. When they approached
2 you, you mentioned they pointing out your shirt, I mean what
3 specifically did they say to you?

4 THE WITNESS: That I was on county property.

5 THE COURT: Okay. Well, that's -- did you -- I
6 assume you agreed with them, that's true.

7 THE WITNESS: Yes, I did.

8 THE COURT: What else? Did they say anything --

9 THE WITNESS: Well, they -- like I said, they
10 pointed at my shirt and so I assumed I needed to leave that
11 area because I had the electioneering shirt.

12 THE COURT: Did they tell you to leave, did they ask
13 you to leave?

14 THE WITNESS: They asked me to leave, Your Honor.

15 THE COURT: Okay. Well, that's what I'm -- so what
16 did they say to you? You said they pointed at your shirt and
17 you -- a moment ago you said you assumed because of your shirt
18 they wanted -- I mean what did they say to you if you wouldn't
19 mind, to the best of your memory?

20 THE WITNESS: Your Honor, to the best of my memory
21 they said that it was county property and that I had to leave.

22 THE COURT: Okay. Did they explain to you why it is
23 that you had to leave the county property or --

24 THE WITNESS: They simply pointed at my shirt and
25 that was the reason -- the other person I was talking to, Your

1 Honor, didn't have to leave, I'm the one that had to leave.

2 THE COURT: So they pointed at your shirt, which had
3 a political --

4 THE WITNESS: Right.

5 THE COURT: -- statements on it, and they said, You
6 need to leave, this is county property?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: And then -- and you left.

9 THE WITNESS: Yes, Your Honor, I did.

10 THE COURT: No further discussion about the issue?

11 THE WITNESS: Your Honor, I didn't want to be rude
12 to the officers or anything like that, so I left and I assumed
13 it was because of the shirt that I was there, that they were
14 pointing at and because it had, you know, a political message.

15 THE COURT: All right. Ms. Avila, you may resume.

16 REDIRECT EXAMINATION OF HILDA GONZALEZ GARZA

17 BY MS. AVILA:

18 Q Ms. Garza, with respect to the permitting process under
19 the building policy, what do you understand to be the fee, if
20 any, to apply for a permit?

21 A My understanding, it's \$25 and \$50 if I --

22 Q If you may, may you turn to Plaintiff's Exhibit Number 2?

23 A Yes.

24 Q This is on page 7 of the policy.

25 A Yes.

1 Q Is that the \$25 and the \$50 --

2 A Yes.

3 Q -- deposit?

4 A And I have to pay -- not only do I have to apply for the
5 permit, but I also have to pay \$25 and like leave a deposit of
6 \$50. And the other thing that I understood was that because
7 it's less than 30 days, it can only be approved by the County
8 Judge.

9 THE COURT: This says, after hours fees, or \$25 per
10 hour, deposits are 50 bucks. You interpret that to mean
11 during ordinary business hours?

12 THE WITNESS: From 8:00 to 5:00. It would be after
13 5:00, Your Honor. I'm assuming that's what it means.

14 THE COURT: And that there would be no fee for use
15 of these places before? I mean, I guess we could --

16 THE WITNESS: There's still a permit fee, Your
17 Honor, that --

18 THE COURT: I mean, this sort of seems like a rental
19 fee. I know I've --

20 THE WITNESS: That's the part that I don't
21 understand, Your Honor. It just says that I --

22 THE COURT: I'm more familiar with --

23 THE WITNESS: It has there the Starr County
24 Courthouse on it, assuming I need to -- even if I'm going to
25 be there at the courthouse I need to pay a deposit of \$50.

1 THE COURT: All right.

2 THE WITNESS: But I still wouldn't be able to
3 distribute any material, Judge. Because if you look at page
4 , under 8, Regulations, and you go to provision (e),
5 depositing or posting handbills, flyers, pamphlets, signs,
6 posters. I can't do that anyway, even if I apply for a
7 permit.

8 THE COURT: That's pretty much every community has
9 a -- because they're concerned about later. You can't post
10 signs on placards, handbills. I mean, that's pretty generic.
11 I think it's been Constitutionally upheld.

12 THE WITNESS: But it also says, parking, Your Honor.
13 It says, lawns, driveways, parking, exterior of buildings, on
14 the stairs.

15 THE COURT: Well, you couldn't post them on the
16 parking spots. I mean, it doesn't say you can't post them on
17 -- they can't be on your car. All right. I mean, I
18 understand your concern with that. Let's move on.

19 BY MS. AVILA:

20 Q Ms. Garza, can you please turn to Exhibit Number 1 --

21 A Yes, Your Honor. Yes, ma'am.

22 Q -- this is on page 8. Do you think it's reasonable for
23 Starr County to make parking available for voters in the rear
24 parking lot and allow electioneering outside the 100 foot
25 marker?

1 A Yes.

2 Q Now, I just want to clarify. After the deputies told you
3 to leave, on February 24th, and they pointed to your shirt,
4 what did you think would happen to you if you stayed?

5 MS. LEEDS: Objection, speculation.

6 THE COURT: Well, it's -- by it's nature, yes. Go
7 ahead.

8 THE WITNESS: And, Your Honor, I guess I could be
9 arrested at that point in time. I didn't want to test the
10 waters on that, so.

11 THE COURT: So you feared either a fine or
12 harassment?

13 THE WITNESS: Right, so.

14 MS. AVILA: Thank you, Your Honor. No more
15 questions.

16 THE COURT: All right. Any final Redirect?

17 RECROSS-EXAMINATION OF HILDA GARZA

18 BY MS. LEEDS:

19 Q Ms. Garza, the use of policy, the use of property policy,
20 does have a fee requirement after hours, correct?

21 A Yes, ma'am.

22 Q You just read that.

23 A Yes, ma'am.

24 Q But are you also aware that that can be waived? Section
25 C, waiver modification requirements.

1 A If we go to --

2 Q If --

3 A What page is -- that would be the first page?

4 Q First page, front page.

5 A Yes, ma'am. It says that the Commissioner Court retains
6 the right to waive.

7 Q All right. So it's not necessarily that you would have
8 to pay. This is a use policy for all Starr County property,
9 correct?

10 A Ms. Leeds, that's correct. But even according to this
11 policy, before I even get a permit for it to go to
12 Commissioner's Court it has to be done 30 days before.

13 Q Well, that is so that they have enough time to actually
14 review it, correct?

15 A That would be correct.

16 MS. AVILA: Objection, Your Honor. Argumentative,

17 THE COURT: I'm sorry. What was the question?

18 MS. LEEDS: Well, the witness added that not only
19 can it be waived, but she also has to apply for it 30 days
20 before and --

21 THE COURT: All right. There's a provision in there
22 that the County Judge can make a decision --

23 MS. LEEDS: Right.

24 THE COURT: -- if it's something quicker. All
25 right.

1 BY MS. LEEDS:

2 Q And so, you have not availed yourself of that provision
3 either, have you?

4 A Which provision is that?

5 Q An attempt to get a waiver of any fees with the
6 application of a permit that would go to the --

7 THE COURT: She's never applied for a permit.

8 THE WITNESS: I've never applied.

9 THE COURT: Let's move along.

10 (Pause in proceedings.)

11 MS. MORENO: Your Honor, we're ready for oral
12 argument.

13 THE COURT: I don't think -- Ms. Leeds, are you
14 finished?

15 MS. LEEDS: No, Your Honor. I didn't rest.

16 THE COURT: Yeah. You still have a few questions.

17 MS. MORENO: My apologies.

18 THE COURT: So you have no more witnesses, then?

19 MS. MORENO: No, we don't.

20 THE COURT: All right.

21 BY MS. LEEDS:

22 Q So Ms. Garza, you were asked earlier about have you
23 witnessed any harassment or have you witnessed any
24 intimidation.

25 A That's correct.

1 Q But you have been quoted as having known about harassment
2 in the past, have you not?

3 A Have I been quoted?

4 Q Yeah. Back when you were with the School Board and you
5 were trying to obtain more voting sites?

6 A Okay.

7 Q There was an article in the *Brownsville Herald* that said
8 that one of the reasons you were trying to obtain more voting
9 sites was because of harassment at the voting. Do you recall
10 saying that?

11 A May I see the document, please?

12 Q Sure.

13 (Pause in proceedings.)

14 A I'm sorry, Ms. Leeds. I don't see in quotes where I say,
15 harassment. Can you show me that on the document?

16 Q Yes. It's not in quotes. It wasn't an actual quote.
17 But that was one of the reasons you gave for wanting to have
18 more voting sites. Is it not?

19 MS. AVILA: Objection, Your Honor. Vague. What
20 time period are we talking about here? For the Record, could
21 she say what it is.

22 BY MS. LEEDS:

23 Q I'm just trying to make the point that harassment has
24 been an issue in the past and that's one of the reasons that
25 this whole thing has come up, is it not?

1 MS. AVILA: Is that -- Your Honor, vague. Is there
2 a question?

3 THE COURT: Do you have a question, Ms. Leeds, or do
4 you want to rephrase?

5 BY MS. LEEDS:

6 Q Is harassment not been an issue in the past, making it
7 one of the reasons?

8 A Ms. Leeds, the comment that I made related back to what
9 happened on March 16th -- or, I'm sorry, during the March 2016
10 election, which were the issues that were had at that primary,
11 where we were electioneering not even beyond the 100 foot
12 marker that we have encroached in. So that's when I had
13 indicated in that article all the problems that were at that
14 particular site for that particular election.

15 Q And it's happened in other places that you know of, don't
16 you?

17 A Happened? What has happened, Ms. Leeds?

18 Q That crowding has made it difficult for voters to get in
19 and vote? People setting up their barbeques and tents and
20 being difficult for voters to get in to vote?

21 A The issue, Ms. Leeds, is that typically at the courthouse
22 they refuse to mark the 100 foot electionary marker.

23 MS. LEEDS: Okay. I'll pass the witness.

24 MR. ALVAREZ: Judge, may I ask a few questions, just
25 about one point?

1 THE COURT: All right. You may.

2 (Off the Record discussion concerning microphones.)

3 RECROSS-EXAMINATION OF HILDA GONZALEZ GARZA

4 BY MR. ALVAREZ:

5 Q This is La Rosita (phonetic) voting place that's going on
6 right now; is that correct?

7 A That's correct, Mr. Alvarez.

8 Q All right. And in this voting plays we have certain
9 particular county businesses that are going on, is that
10 correct?

11 A Yes.

12 Q And one of them is the Commissioner's Fish, and one is
13 located right here in the building, right?

14 A That's correct.

15 Q And also the library, the public library is located in
16 this building where the voting is going on, is that correct?

17 A That's correct.

21 MR. ALVAREZ: Right, Judge, that's correct.

22 BY MR. ALVAREZ:

23 Q And then next to that same building, and what I'm
24 pointing at is the Justice of the Peace, Phase I. Is that
25 correct?

1 A There's --

2 THE COURT: In that same building?

3 MR. ALVAREZ: Same building, Judge.

4 THE WITNESS: There's a pre -- I don't remember
5 there. I know that across they have another -- where
6 Mr. Jesse Availlare (phonetic) has it.

7 BY MR. ALVAREZ:

8 Q Well, they used to have it on this side but now they
9 moved it right in here.

10 A Yes.

11 Q Justice of the Peace is what moved, was there.

12 A Okay.

13 Q Were you given all that?

14 A I have not been to that particular precinct or Justice of
15 the Peace, Mr. Alvarez.

16 Q I thought you mentioned a while ago that you measured
17 this area.

18 A I did measure, Mr. Alvarez, and I do remember that there
19 was some signage, and I measured from the entrance where they
20 had voting site.

21 Q Okay.

22 A And I went all the way to -- tried to go straight to the
23 edge of the highway.

24 Q In this same area there is a fire department that is
25 located right here in this area?

1 A That is correct, yes.

2 Q All right. And next to this fire department there's an
3 elderly -- I'm sorry -- a child care facility that is operated
4 by the Migrant Council. Do you know that?

5 A That one I didn't get to look at, Mr. Alvarez.

6 Q Did you look at -- there's also, in this same location,
7 they use the same parking lot here, that is also being used by
8 the food pantry. You know that, right?

9 A Yes.

10 Q All right. And here, in this area, this is the only
11 parking space that belongs to the County, is that correct?
12 And I'm looking at the surrounding area.

13 A That's correct.

14 Q And all these areas where the cars are parked, they're
15 the ones doing business and there's only like 15 parking space
16 there. Is that correct?

17 A Maybe a little bit more. But not that much more.

18 Q Kind of common, the car will only go -- I counted 15
19 parking space there. But, I mean, so be it, the Court can
20 look at it.

21 And those 15 parking space are the one that you are
22 suggesting people can put tents up, barbecue pits on, and so
23 forth. Is that correct?

24 A I think they normally put them a little bit on the side,
25 Mr. Alvarez. I've seen them do that too.

1 Q Well, this particular site, where the voting is going on,
2 is very limited in space. Would you agree to that?

3 A Yes, that is correct.

4 Q All right. And if we allow all 49 candidates or 37
5 candidates -- I don't know how many there are, there was a lot
6 -- can we put election areas and tents and barbecue pits,
7 everything else. The people that have business in the County
8 property does not have any place to park, is that correct?

9 A Yes. If you fill it up all with tents, yes.

10 Q And then the County will not have, at least a proper
11 parking for the people that have business within the County,
12 is that right?

13 A That's correct.

14 Q And would you think that is feasible for the taxpayers of
15 Starr County, not to have their parking, at least when they're
16 doing business in the day?

17 A With regards to tents? No.

18 MR. ALVAREZ: I withdraw the question, Judge. I
19 have no further questions.

20 THE COURT: All right. And, let's see, Ms. Moreno,
21 you said there are no additional witnesses on behalf of the
22 Plaintiffs?

23 MS. MORENO: That's correct, Your Honor.

24 THE COURT: All right. Did the Defense have any
25 witnesses they would like to call?

1 MR. FONSECA: One witness, Your Honor.

2 THE COURT: All right. Ms. Garza, you may be
3 seated.

4 (Witness excused at 11:48 a.m.)

5 MS. GARZA: Yes, Your Honor.

6 MR. FONSECA: We call District Attorney Omar
7 Escobar, Your Honor.

8 THE COURT: All right.

9 (Witness sworn, 11:49 a.m.)

10 THE COURT: All right. Please be seated.

11 MR. FONSECA: Is there a binder there?

12 THE WITNESS: No, there's no binder.

13 THE COURT: Where was the binder that the witness
14 was using?

15 MS. AVILA: Your Honor, Plaintiffs are happy to make
16 their witness binder available to Defense Counsel.

17 THE COURT: Well, all right. Given how happy you
18 are, we'll allow them to use it.

19 All right. Whenever you're ready, Mr. Fonseca.

20 DIRECT EXAMINATION OF OMAR ESCOBAR

21 BY MR. FONSECA:

22 Q Mr. Escobar, what is your position with the County?

23 A I'm the 229 Judicial District Attorney

24 THE COURT: And your full name, please, for the
25 Record?

1 THE WITNESS: Omar Escobar.

2 BY MR. FONSECA:

3 Q And Mr. Escobar, you played an important part in this use
4 policy, correct?

5 A Well, I would say so, yes.

6 Q How were you involved in coming up with this -- with the
7 use policy?

8 A I helped draft this particular policy.

9 Q I'm sorry?

10 A I helped draft this particular policy.

11 Q And why did you draft this policy?

12 A Well, in looking at some of the issues that were sort of
13 coming up, because we had already gone through -- the County
14 had already adopted that previous policy, the Court has
15 indicated that has been in artfully drawn.

16 So in viewing some of the issues that were coming up,
17 some of the other issues that we started thinking about was
18 that we didn't have policy dealing with property and how the
19 public can use property. There was nothing.

20 And so I do remember the date, but I remember calling
21 Canales, who is a County Attorney, and asking, what would
22 prevent me from parking a trailer full of cattle in our County
23 parking lot. Tell me what prevents me from doing so. And
24 there was sort of a pause and said, well, nothing, nothing
25 does.

1 And so, the reality was that the County simply had no
2 governing policy regarding the use of property. So commenced
3 to try to look for go-by's that we could use to be able to
4 draft as far as a policy that could be considered by the
5 Commissioner's Court in regulating not just buildings, but
6 property that the County owns.

7 Q Now, have there been any issues with food being prepared
8 or being served at locations -- at these County properties?

9 A Food being prepared. Okay. I'm assuming you're
10 referring to a particular incident that you and I just spoke
11 about.

12 Q Yes. Yes, Mr. Escobar. Chicken was involved.

13 A So let's get to the chicken issue, I suppose that's what
14 you want to get to. So what you're asking is, have there been
15 incidents.

16 There was one incident, and this is part of where we get
17 to some of these electioneering issues is that -- you have to
18 understand I have to see the map so that I can explain to the
19 Court. But you have to understand that there are several
20 locations that are used for County wide polling locations.

21 And so --

22 Q The courthouse map will be helpful?

23 A Well, yes. So, to give the Court context, I can use a
24 pointer. I'm so used to getting up and pointing.

25 So in the ordinary elections that we have, for example

1 the primaries. What ends up happening because there is no
2 County policy, property policy. What ends up happening is
3 that sometimes about a week in advance people start parking
4 their vehicles overnight to ad hoc designate where they're
5 going to put their tents, some of which are large tents.

6 So what ends up happening is that pretty much this entire
7 area ends up being commandeered, this entire area here.

8 THE COURT: And basically you're pointing to the
9 back half of the parking lot that's striped, designated for
10 parking spaces.

11 THE WITNESS: Yes. All of that area ends up being
12 commandeered. How do I know? Because I have personal
13 knowledge.

14 And so this entire area during courthouse hours,
15 talking about we've got grand jury proceedings, we've got jury
16 trials, we've got regular. Remember, what's housed at the
17 County Courthouse is, you've got County Court law, you've got
18 two District Courts, you've got a District Clerk, you've got
19 the County Clerk's office, you have the District Attorney's
20 office, you have the County Attorney's office, and you have
21 some other, like crime victims' unit. So there's always a lot
22 of traffic from day-to-day into the courthouse.

23 So what ends up happening, like I said, is that you
24 have this entire area that I pointed to, basically
25 commandeered. Just taken over. And it's no longer available.

1 And sometimes you have, you know, you have defendants that
2 come from the jail from the north, because the Court doesn't
3 have a context. So the jail would be up here and they come
4 around and drop off defendants here and then they come in.
5 This is all happening during regular polling hours.

6 And so having said that, so we started kind of
7 looking at and thinking about how the County can regulate the
8 use of County space. And so that's what sort of giving rise
9 to looking at now a more comprehensive County use policy.

10 So there was one election, I'm going to say in -- if
11 memory serves, in May of 2016. And in that mayoral race there
12 was an argument over a barbecue pit between the parties. And
13 so what ends up, the end result of that argument was that
14 there was some chickens being cooked on one of these large
15 barbecue pits. These are not the small, these are the big
16 pits, these are for professional -- you know, well, not
17 professionals but these are the heavy duty ones.

18 THE COURT: Sure. They're on wheels like trailers,
19 basically.

20 THE WITNESS: Yeah. They're trailers. So what ends
21 up happening is that because over the argument over whose two
22 opposing camps, they took -- there was some chicken. It was a
23 very -- so it became a notorious incident. So one of the
24 candidates actually took the chicken and flung it onto the
25 parking lot, in that area that we're talking about over here

1 in the back. And so somewhere in that area there, they flung
2 it so there was chicken on our County property and County lot.

3 So, you know, there's been disputes before, but
4 that's one of them where they were like -- they threw this
5 half coked or baked chicken onto our County property.

6 BY MR. FONSECA:

7 Q Does this constitute safety hazard?

8 MS. AVILA: Objection, Your Honor. Just to the long
9 line of leading questions.

10 THE COURT: I mean, it speaks for itself, raw
11 chicken on a parking lot.

12 THE WITNESS: Probably not a good thing, no.

13 BY MR. FONSECA:

14 Q While we're looking at his map, you've just listened to
15 the witness talking about the surrounding areas. I mean,
16 everything's around the courthouse and the parking lot, County
17 property?

18 A Well, no. The only County property is actually the
19 square with the red line around that, that's the square.
20 Everything else is city property or privately owned. You
21 know, in fact, you know, Mr. Alvarez's office is right here,
22 and then you have another office right here, another attorney
23 office here, another attorney office over here. So -- and
24 then this is going to be City property and that's going to be
25 City property.

1 Q This particular parking lot --

2 A And that belongs to the KC, to the KC Hall. It's used on
3 occasion -- well, it's used by juvenile County employees. So
4 that's that area that's used there, so it's a small area that
5 they usually use.

6 From time-to-time if we have overflow, for example, on
7 jury trials where we might have people coming in, when you
8 have a voir dire panel coming in, sometimes you might have
9 this area park -- where they start parking there. But this is
10 private property, that's not public property.

11 Q Is the parking lot on the north side of the courthouse
12 sufficient for the needs of the courthouse?

13 A In my opinion during -- during election year periods?

14 Q Yes.

15 A No. I there's no way. Half of this entire -- from here
16 to here is usually commandeered by everyone that's running,
17 whether it's one or two sides, however, it's going to be
18 commandeered. It's like it's taken over, it's no longer
19 available.

20 Q Are there any permit fees under the policy --

21 A To my understanding there are no application fees, but
22 there are -- if the application is rented there are permit
23 fees for the use of what is going to be, like, for the City or
24 whatever it might be, representing the cause to the taxpayers
25 of using those particular buildings. And we're talking about

1 buildings or property.

2 So as far as I know there's no application fees and there
3 could be permitting fees for those -- especially those used
4 after hours. And even those can be waived depending on the
5 use that has been requested. So if it's some kind of public
6 use those can also be considered to be waived.

7 So in other words, Commissioner's Court retains the
8 authority to waive those fees.

9 Q These \$50 deposits --

10 A Right.

11 Q -- referred to on page 7 of the policy, what are those
12 for?

13 A Correct. Those would also represent deposits that, for
14 example, it could be for clean up and for the things that
15 might be used that are ordinarily associated with the use of
16 public buildings. So that's just -- it's a fee that was
17 imposed or that was adopted by the Commissioner's Court that's
18 subject to change or it can be subject to waiving.

19 Q Let me move on to Plaintiff's Exhibit Number 11.

20 A Yes.

21 Q Do you recognize the two individuals in that picture?

22 A I do.

23 Q Who are they?

24 A One of them is Ms. Hilda Garza and the other person is
25 Martin Martinez, Jr., Justice of the Peace.

1 Q You heard testimony on the covering up of this political
2 sign here. What happened after they finished covering it up?

3 A Okay. So a lot of attention has been drawn to this
4 incident. So what actually happened was that on Tuesday,
5 which would have been the first day of early voting, the
6 presiding judge -- my understanding, the presiding judge --
7 and the Court will excuse me if I get into hearsay. I don't
8 know if there's going to be -- so a lot of this is going to be
9 based on hearsay and then I can talk about what my personal
10 conversations with Mr. Martinez. So --

11 Q Let's talk about your personal conversations with
12 Mr. Martinez.

13 A Right. So Mr. Martinez, so I think it would have been on
14 Wednesday that I heard -- I had understood that -- and I don't
15 recall from whom, that -- it may have been from the security,
16 I'm not sure -- that Mr. Martinez was ordered to sort of put
17 that paper over his his truck because it was electioneering.

18 And actually, I think I saw it myself from my office from
19 the third floor, so I was able to see it. And I began
20 thinking, well, why is he covering up his sign. So I did
21 speak to the Elections Administrator, John Rodriguez, and I
22 indicated to him our property use policy very clearly states
23 that outside of the 100 feet they can have stickers, they can
24 have, you know, some kind of signs, political signs. It says
25 it.

1 So his response was, it was the presiding Judge's call,
2 that she took it upon herself to -- at that polling location,
3 we're talking about the courthouse polling location. The
4 presiding Judge in that location made the call to say that
5 they needed to take down the stickers or the signs or remove
6 whatever need to be done. At which point I think -- and
7 actually I think Mr. Canales got involved in that, and we both
8 gave our opinion that it was allowed under the County use
9 policy. So the presiding Judge had no authority outside the
10 100 feet electioneering zone and could not have ordered
11 anybody to get out of our parking zone for that purpose.

12 So I think that eventually -- so then I spoke to
13 Mr. Martinez -- and I would have been on the first floor, and
14 I apologize to the Court, it would have been Wednesday or
15 Thursday, I don't remember when it was. And I specifically
16 told him, you can have your sign and you don't need to cover
17 it up if you're outside the 100 feet.

18 So he, in fact, did that. In fact, his vehicle has
19 remained on the Starr County property as far as I knew, in
20 fact all weekend, because I saw it over the weekend, with
21 fully -- you know, in other words, uncovered. So this issue
22 was resolved. Very clearly we're not going to enforce that.
23 In other words, the policy is you can have stickers.

24 Q And what about the bumper stickers that had been ordered
25 covered up that the witness testified about?

1 A I'm not aware of this because we made -- the County
2 Attorney and myself made it explicitly clear that persons can
3 have -- pursuant to just reading the policy it's clear, you
4 can have bumper stickers. I mean, there should be no debate
5 about it.

6 Q Have you talked about this with the Elections
7 Administrator?

8 A With the Elections Administrator, who then talked to
9 them, who then speaks with the presiding Judge. The presiding
10 judge had no -- so there was confusing the first day. I said,
11 the presiding judge has no authority outside the 100 feet, so.

12 MR. FONSECA: Your Honor, we included as part of our
13 response, Exhibit A, which are Google maps, which -- like this
14 one, that show the red line around the property just to -- a
15 little bit more clearer than all the other exhibits that have
16 been provided.

17 But I also added a white line to each one of these
18 using the Google map measuring -- measurement tool to show
19 what 100 feet looks like. And every one of these exhibits has
20 that. I just want to use it for demonstrative purposes.

21 THE COURT: All right. You may. I didn't catch the
22 white line. I saw that the red line was much more visible.
23 Because in some of the Plaintiffs' I couldn't tell, especially
24 the ones in rural areas. It's tough to see the red line.

25 MR. FONSECA: All right. And I have provided a copy

1 to Plaintiff's counsel prior to --

2 THE COURT: All right. So you now have a white
3 line.

4 MR. FONSECA: And it's right here, Judge.

5 THE COURT: Okay.

6 BY MR. FONSECA:

7 Q I mistakenly put it on the wrong door, it should be up
8 here, the 100 foot line goes up to about there. Is that
9 correct, Mr. Escobar?

10 A I can tell you where the 100 feet is, more or less.

11 Q Where is the 100 --

12 A So the 100 feet is going to be somewhere -- it's going to
13 be somewhere -- that the cone is usually somewhere here. If
14 you measure it from the actual door it's going to go right
15 past this median, it's going to be right there.

16 But that's where Ms. Gaza's sort of brought up an
17 argument in the past, that tents were set up. But, you know,
18 they were right here, like right at the edge of the 100 foot
19 marker, and so technically would have been inside the
20 electioneering zone, the 100 foot prohibition of
21 electioneering zone that Texas has, 63 Texas Election Code.

22 So here's a door and 100 feet is right around that area.
23 And from this other door, from this door the 100 foot is
24 somewhere around this area here, right there, so.

25 Q So the parking lot and then just maybe the corners of the

1 courthouse property is -- the common areas are just these
2 round corners, correct?

3 A Okay. So under the policy? Under the policy anything
4 that is not a parking zone is a common area. Anything that is
5 not a parking zone is considered a common area. There's only
6 really two classifications of property that you have.

7 Q So these grassy areas are common areas?

8 A Yeah. Anything that is not a parking zone, that has not
9 been designated as a parking zone is a common area.

10 Q Okay. And these can be used for electioneering as long
11 as they're outside the 100 foot marker?

12 A Sure. Assuming that you requested an application. In
13 other words, for whatever -- because the County policy speaks
14 to any property use, whether during the election period or
15 outside of election periods, for whatever use you may be
16 thinking about using, whether -- it can be -- if you think
17 you're going to be selling stuff, or it can be whatever
18 purpose that one can conceive of, as far as the use of the
19 public property.

20 You request an application, then you have permits that
21 are going to be issued depending on the location that you're
22 requesting and what the public use is.

23 Q Are there County parks that you rent out pavilions at or
24 anything like that?

25 A Okay. Well, here's the problem, and that's one of the

1 problems we were addressing. One of the commissioners has a
2 pavilion in which -- and actually, let's go to -- do you have
3 --

4 Q Is that La Victoria?

5 A Let's show the Court La Victoria. So let's look at --
6 Okay. All right. So, no. Encineso (phonetic). I'll show
7 the Court what this is.

8 Encineso (phonetic). Okay, yeah. So your polling
9 location is right here. This is your polling location right
10 here.

11 THE COURT: And that's a election day only or early
12 voting?

13 THE WITNESS: Early voting.

14 THE COURT: Okay. Early voting, encineso
15 (phonetic), okay.

16 THE WITNESS: Okay. Encineso (phonetic). So -- and
17 then you have this entire area designated as parking zone,
18 parking area. So for example, here you're going to have an
19 adult -- I think it's like an adult center here, adult day
20 care center.

21 THE COURT: And that's the first building on the
22 right when you come into the parking lot?

23 THE WITNESS: That's correct. That's correct,
24 Judge. I'm sorry. And then you're going to have the JP
25 office here, the Justice of the Peace office, and then you're

1 going to have the Commissioners' office right here. This here
2 is a pavilion.

3 So to our understanding the County Commissioner of
4 that precinct was renting that building out, but not renting
5 it out. And so that becomes somewhat of an issue. For the
6 years that he has been Commissioner, we know of persons that
7 have used this, this location, but we've never seen any money
8 deposited, ever, in the County, that has ever been brought.

9 So one of the things that this property's policy
10 indicates is, that if you're going to rent out taxpayer
11 property or you're going to allow the public to use, you're
12 going to need to account for it. And it doesn't belong to any
13 particular commissioner, it belongs to the County as a whole.

14 So this property use policy also addresses the
15 situation where pavilions are rented out, leased out, loaned
16 out, to the public and it standardizes that particular
17 process. If you're going to rent out a pavilion for an event,
18 you better get an application on file and then get a permit
19 approved. Okay. So that's one of the things that this
20 particular policy does.

21 BY MR. FONSECA:

22 Q Are there liability concerns?

23 A Well, of course. I mean, that's one of the things that
24 you're going to be looking at. If there's an accident or
25 something would happen, of course we want waiver of liability

1 forms, at least some, you know, documents or -- you know, that
2 we might need for the County to sort of limit its exposure.
3 But as we know the County can limit its exposure as much as it
4 wants, but there's always going to be certain liability when
5 you have a public using, you know, the public property.

6 Q So looking at this particular property, we have the north
7 and the northeast area --

8 A Yeah. But the --

9 Q -- to be used as long as it's outside the 100 foot
10 buffered zone?

11 A Right. Because the County property doesn't -- and here,
12 like all of this area's County property. I mean, there's a
13 baseball field, there's a field that travels even further
14 north than this. And like I said, anything that is not a
15 designated parking zone is a common area.

16 Q And just to show the Court the 100 foot mark on
17 La Rosita.

18 A And Mr. Alvarez was asking a question but was also
19 testifying at the same time. This is the fire engine right
20 here. So there's usually a fire engine right here.

21 THE COURT: Well, I see two parked out in front, it
22 looks like. That looks like those are red trucks. I assume
23 those are fire related.

24 THE WITNESS: Yeah. Right. They're usually going
25 to be in this area right here, and then you have operations

1 back here, the County. You know, you're going to have
2 backhoes and heavy equipment back here and you're going to
3 have all kind -- you know, this traffic in and out here. And
4 so, this is 83. You're traveling at highway speeds right here
5 and you sort of turn off into this area.

6 And so what happens is that during election periods
7 you're going to have -- right around this area here people set
8 up all their tents. Like they set up tents and barbecue pits
9 and whatever. So you're left with this little -- Mr. Alvarez
10 made a point. There's just this little area, little zone.
11 There's a little bit of area on this side where people have to
12 come in and sort of battle for a place to park to go into the
13 polling place.

14 THE COURT: And then they have to walk though the
15 area where the tents are, generally, if they're going to go
16 straight to the front door, apart from the regaining parking
17 spots.

18 THE WITNESS: Correct, Judge. So if you try to go
19 here and it's not blocked, in this area. If you're lucky
20 you're going to come around this area and sort of park in
21 front, and then try to avoid these people right here, right in
22 this area that are kind of eyeballing you and maybe telling
23 you -- shouting at you. This is from personal knowledge.
24 They're going to be looking at you and sort of -- if you can't
25 go here you better look for somewhere else here, and you have

1 to walk past this area, walk past these other areas to get to
2 the polling location.

3 BY MR. FONSECA:

4 Q Would this be the only area that, as a citizen, you could
5 park in to avoid these tents in order to conduct business in
6 Precinct 1, the library and the child care center?

7 A Well, from personal experience you're going to have cars
8 lined up. Because it's not just the candidates, it's their
9 supporters also. So they're going to park out -- and workers,
10 they're going to take up this entire area here. So, like I
11 said, the only real place to park during election period is
12 really up front. You're going to have hope that this isn't
13 filled up. And most people, when they see this mess will come
14 back another day.

15 Q Here we have La Victoria, correct?

16 A Yes. All right. So --

17 Q Where the elections take place?

18 A Right. This is also a pavilion. This is also used for -
19 - can be used for community events and can also be used by
20 private persons, evidently for weddings and stuff like that,
21 you know. And this is where -- or other kind of events,
22 social events. This is where the polling location is actually
23 at during election day, on election day this is the area. But
24 this is an operating community center, so there's an JP office
25 here and there's a County warehouse here.

1 And I think this is the JP office here and there's some -
2 like an operations here. So there's areas that are used for
3 parking, is going to be used for parking here. And then this
4 area over here is also used for parking.

5 But the County property is actually much larger. It
6 actually covers this entire area in this zone back here. The
7 outside red area right here is just an outer zone, but it
8 doesn't represent all the County's property there. This is
9 like a park here, area, and there's a park over here, so.

10 Q Those are just the lines that were drawn in -- that were
11 drawn over.

12 A Right. In the original work, yes, in the original.

13 Q And finally, the courthouse annex. Why is this
14 particular location important for the County?

15 A Well see, this is the counting station. So all the
16 counting that happens on election day, when you bring in all
17 the machines, all the M-100s, and you do the counting, all the
18 mail-in, everything. All the mail-in, everything, is kept
19 here in this location.

20 Now right now it's not a polling location. It is just a
21 central counting station. But nothing prevents the County
22 from later designating this as a polling location. It can be
23 used at a later time.

24 Q And the green areas on the west side of the property, are
25 those available? I'm sorry --

1 A These are two?

2 Q Yes.

3 A So these areas presumably are, because I don't know
4 title, I'm not exactly sure of the title of this particular.
5 But this I think, these areas right here, are probably
6 available for electioneering. These areas here. But on that
7 I don't know so I have to qualify that. I don't know the
8 title. Because this could also belong to the Highway
9 Department, right there, so I don't know. But these are
10 improved areas, so my understanding is that they can be used.

11 MR. FONSECA: Those are all my questions, I'll pass
12 the witness.

13 THE COURT: All right. Any cross examination? It's
14 Ms. Perales?

15 MS. PERALES: Yes, Your Honor.

16 THE COURT: All right. You may proceed.

17 CROSS-EXAMINATION OF OMAR ESCOBAR

18 BY MS. PERALES:

19 Q Good morning, Mr. Escobar.

20 A Good morning.

21 Q I think maybe it's good afternoon at this point. I only
22 have a couple of questions for you. If you wouldn't mind
23 turning with me to Exhibit 7 in the binder.

24 A Yes. Yes.

25 Q I'm going to use a little technology to get there. Do

1 you recognize this document as a copy of a Facebook post for
2 the 229th Judicial District Attorney?

3 A That's correct, yes.

4 Q Thank you. If you wouldn't mind turning to tab 13,
5 please. Do you recognize this document as a correct copy of a
6 Facebook post by Omar Escobar, Jr., titled, Starr County
7 Election Update, on February 23rd?

8 A Correct. It looks like it, yes.

9 Q And that's your Facebook post, correct?

10 A Yes, that's correct.

11 Q And did you author both of the Facebook posts that we
12 talked about?

13 A Yes, I did.

14 Q If you wouldn't mind -- well, in just one moment I'm
15 going to put up one of the maps that you have looked at with
16 the County Courthouse. This is a map attached to Plaintiff's
17 Exhibit 1.

18 A Right.

19 Q Now, if we're looking at the County Courthouse, I'm just
20 going to ask you a couple of questions about this.

21 A Right.

22 Q It's correct that under the County's property use policy
23 there is no permitting process for the parking areas. There
24 are parking areas and there are common use areas, is that
25 correct?

1 A That's correct.

2 Q And you need a permit to use a common use area, correct?

3 A Correct.

4 Q And there is no use of parking areas. Those are reserved
5 solely for parking, is that correct?

6 A That's correct. That's for parking.

7 Q And so, for example, to use an example that the Court has
8 mentioned. If we're looking just at this back parking lot,
9 which you see at the top of the picture, and seven different
10 Girl Scout Troops sent up tents to sell Girl Scout Cookies in
11 that back part of the parking lot, that would be prohibited,
12 isn't that correct?

13 A You mean during courthouse operations?

14 Q Yes.

15 A That would be prohibited. That would be prohibited, yes.

16 Q And they couldn't get a permit to do that either because
17 it's a parking area, correct?

18 A Right. Because the governing body has the authority to
19 list it as a parking area.

20 Q Of course. Putting aside the question of authority, I
21 just wanted to draw out the distinction between parking areas
22 where the Girl Scout tents would not be permissible and
23 there's no permitting process. But, for example, if there was
24 a park, a common area somewhere in Starr County, the Girl
25 Scouts might be able to apply for a permit to use that. Is

1 that right?

2 A Correct. To the extent if it's a common area, sure.

3 Q Thank you. And so, if we change the example from the
4 Girl Scout tents to candidate tents, barbecue pits, ice chests
5 and chairs. If those are set up in the back parking lot there
6 as well, that's also a prohibited use, correct?

7 A That's correct. Parking lot is for parking.

8 Q Yes, yes.

9 A I don't know if we can go any further than the parking
10 lot is for parking. Any other examples that you give me, my
11 answer is going to be the same.

12 Q And then the same question. There is no permitting
13 process to be able to set up those candidate campaigning
14 electioneering tents in that back part of the parking lot
15 because it's parking, correct?

16 A It's for parking. Yes. And, by the way, we haven't
17 testified to this. But there's ingress and egress of
18 vehicles. They come in this way and they've got this way. So
19 it's constant, just constant traffic back and forth.

20 Q And then, finally, one more example. If an individual
21 wants to election year, wearing a candidate tee-shirt, handing
22 out what we call palm cards or other campaign material, in the
23 back half of the parking lot, that would be a prohibited use,
24 correct?

25 A Right. It's prohibited both within the 100 feet, which

1 currently exists, and then would also be not a permissible use
2 of our parking lot. So you have to apply for an area that is
3 not a parking lot. So you can apply for any other area and
4 just would need to be considered by the Commissioner's Court.
5 Pretty sure not just one person would end up applying. You'd
6 have to end up with a whole bunch of permits and kind of
7 figure out. But that would be for the deliberative body to do
8 at that point.

9 Q Thank you. Thank you, Mr. Escobar. And there's also no
10 permitting process for an individual who wants to, election
11 year, with tee-shirt and hand out materials, there is no
12 permitting process for that individual to engage in those
13 electioneering activities in the back half of the parking lot,
14 correct, because it's a parking lot?

15 A Because it's a parking area, that's correct.

16 Q Okay, thank you. What is the penalty for violating the
17 County's electioneering policy?

18 A As far as going on to these locations without a permit?

19 Q No. The penalty for violating the electioneering policy.

20 A Right. In the extreme case, after we consider it, if
21 you're on a location or public property without permission,
22 it's possibly trespass, depending on, you know, the
23 circumstances. It could possibly -- of course the County
24 Attorney -- that would be in the County Attorney's purview.
25 But it possibly could be a trespass. It's like going on to

1 any property without permission. At some point if you're not
2 using it in accordance with the policies that have been
3 directed, it is trespass because you're on there without
4 permission.

5 Q And the fine for this penalty, which is expressed in the
6 electioneering order slash resolution and incorporated in the
7 building use policies, \$2,000 and up to six months in jail, is
8 that correct?

9 A Up to. I think it's up to that amount. So depending on
10 if a jury would find you guilty, I suppose, or whoever the
11 trier of fact may be. It's the normal penalties for trespass.

12 MS. PERALES: Thank you. I pass the witness.

13 THE COURT: Any Redirect?

14 MR. FONSECA: One follow up question, Your Honor.

15 REDIRECT EXAMINATION OF OMAR ESCOBAR

16 BY MR. FONSECA:

17 Q Why is it important for the County to keep people from
18 passing out pamphlets or bills or anything in a parking lot?

19 A Well, one of the things I believe that can happen is --
20 number one, the Court alluded to it, is that, you know, there
21 is authority at the very least to regulate the kind of sort
22 trash that you have in those areas or zones.

23 But not only that, when we're talking about parking
24 areas, pedestrians and vehicles don't mix very well. And it
25 is important for the County to be able to stress, or in other

1 words to regulate who can actually be on those parking areas,
2 or in those parking areas.

3 So otherwise the situation that you would have is that,
4 for example, if we'd say, well you can't electioneer -- or you
5 can electioneer all you want in parking zones. Then you have
6 mass of people in our parking areas and I know what's going to
7 happen because I've seen it. As soon as a voter gets to the
8 parking area they will be mobbed by each side trying to get
9 the vote, it will happen. And so you're going to have people
10 just crawling over the parking area trying to get the vote of
11 that particular person, before they even get down from the
12 vehicle, and that's precisely what will happen.

13 So, you know, one of the things is, you can't have people
14 just walking all over the place when you've got traffic,
15 especially when you're got ordinary, routine government
16 operations going on. And I think the deliberative body, the
17 County, can in fact regulate what zones are available for what
18 uses and whatnot. And these are, I would venture to say,
19 important regulations as far as the safety -- not just for the
20 persons that are on the parking lot, but also to make sure
21 that voters do have a right to vote, to protect the integrity
22 of the election process.

23 MR. FONSECA: Thank you, I'll pass.

24 MR. ALVAREZ: May I have --

25 THE COURT: Sure, you may.

1 RECROSS-EXAMINATION OF OMAR ESCOBAR

2 BY MR. ALVAREZ:

3 Q The elections started -- earlier the elections started
4 November the 20th or when did it start?5 A The 20th, I believe. Well, it would have been Tuesday,
6 so it would have been this last Tuesday, so whatever that day
7 was.

8 Q It would have been the 20th.

9 Q From the 20th, 21st, 22nd, 23rd and 24th, and this
10 Saturday, the 25th, did anybody complain to you that they are
11 being harmed in any way because they're not using the parking
12 lot of the County? Is that still the --13 A No. And you referenced -- no. And so I just referenced
14 it in one of the maps. So a lot of the electioneering is
15 going on just outside of the County parking lot, so you have a
16 mass of people, but they're outside of our parking areas, or
17 for the most part anyway.18 And so they're around the area but just not inside the
19 parking lot, so I couldn't imagine what injury there is. I'm
20 going to say there's maybe 20 foot -- 10 feet -- actually
21 some people are right outside our parking lot as cars are
22 trying to drive in, in some instances. But they're right
23 outside the zone.24 But as far as complaining about not being able to reach
25 the voter, no, I have not.

1 Q People can still campaign and give their literature out
2 and put a tee-shirt outside the parking area --

3 A Well, in fact, Mr. Alvarez, you were doing campaigning
4 and you were able to also campaign outside of the area.

5 Q Sure.

6 A And so, I didn't hear any complaints from you or anybody
7 else as far as not being able to adequately reach the voter.
8 In fact, you have an office -- what is it, about 20 feet from
9 the outer zone of the courthouse, so you have been able to
10 campaign, so I don't know -- and there has not been any member
11 of the public that has approached me or called me or told me,
12 complaining about not being able to electioneer. In fact,
13 quite the opposite. I think most of the residents, the County
14 resides ask, what took you all so long.

15 Q And we only have a few days to go, this Tuesday,
16 Wednesday, Thursday, and Friday of this week, and then Tuesday
17 of next week, and the election is over, is that correct?

18 A Correct.

19 Q At least the democratic primaries and the republican
20 primaries, right?

21 A Correct.

22 MR. ALVAREZ: All right. Pass the witness, Your
23 Honor. I have no further questions.

24 MS. PERALES: Your Honor, I just have one quick
25 follow-up question.

1 RECROSS-EXAMINATION OF OMAR ESCOBAR

2 BY MS. PERALES:

3 Q Mr. Escobar, when you were asked just a moment ago what
4 the penalty would be --

5 A right.

6 Q -- you were testifying out of what's written in the
7 order, right?

8 A The original order.

9 Q The original order. And you --

10 A Or policy or whatever. Right, okay.

11 Q The original order says: Any person violating a rule
12 adopted under this order. Have any rules been adopted under
13 this order?

14 A Under that order?

15 Q Yes.

16 A Not that I know of.

17 Q So the questions that Plaintiff was just asking you
18 about, the penalties, really don't apply to the policy itself,
19 do they?20 A Right. You have to understand -- and the Court honed on
21 it very quickly. The original order does have its issues,
22 obviously. It's the property use policy that really should be
23 at issue here. I don't see -- and I would have to agree with
24 the Court, attempting to enforce that first order is going to
25 be difficult. It's the subsequent property use policy that,

1 as law enforcement, we would be trying to enforce and that
2 would be under the penal code. In other words it would have
3 to be trespass under that test. So, I mean, as law
4 enforcement officers I couldn't imagine trying to really
5 enforce that first order. Just couldn't do it. It's the
6 property use policy that we are focused with.

7 MS. PERALES: Thank you.

8 THE COURT: One of things the Defendants brought
9 out, I'm just going to -- they brought it up but they didn't
10 ask you specifically about it, was your Facebook post.
11 Towards the end of it basically you say: Starr County's
12 property use and electioneering policy continues to be in
13 effect and electioneering is not permitted in County parking
14 lots.

15 I'm just kind of curious to get your thoughts on
16 what you meant by that, because you testified at one point
17 that you got business at the courthouse you can park in the
18 parking lot, you can have a sign on the side of your pickup
19 truck that says Martinez for JP, which is considered
20 electioneering because you're advertising for a candidate.
21 And you also mentioned bumper stickers and other things
22 affixed to vehicles can be in the parking lot, assuming
23 they're affixed to a car that's parked there.

24 So what did you mean by electioneering is not
25 permitted when at the same time you're saying, well, it is

1 permitted under certain circumstances?

2 THE WITNESS: Sure, I understand what the Court is
3 asking. The post is to public. And so, in my mind, we're not
4 talking to attorneys, we're talking to lay people. And so the
5 first thing that will come to mind -- and we're referencing
6 the last post, correct, according to this?

7 THE COURT: Yes.

8 THE WITNESS: So what ends up happening is, in my
9 mind, when people hear federal lawsuit, the sky is falling.
10 Uh-oh. All the rules are out and now we're going to go back
11 to the old system. And so my intent was to -- for the public
12 to understand that we were not going to have people flooding
13 the parking lots because that's what they don't want. They
14 want to go in to vote and get out. And in other words, they
15 don't want to be pressured, harassed, eyeballed, or approached
16 in any way, manner or form.

17 So my intent was to let them know that the Court had
18 not issued any restraining order. That they could peacefully
19 go and park, go in and get out, which is the most commentary I
20 get as an individual now. Because if they can go and get out
21 without having to be approached by anybody.

22 So that was the notion. Did it mean that we were
23 prohibiting everybody from having stickers and otherwise
24 political signs on their vehicles, no. Electioneering in our
25 mind, at least to the public is when somebody's approaching

1 you to ask for a particular vote. So that's what I was trying
2 to get at.

3 THE COURT: All right. I just wanted you to clarify
4 that.

5 All right. Anything else from anybody?

6 You may be seated, Mr. Escobar.)

7 (Witness excused, 12:31 p.m.)

8 MR. ESCOBAR: Thank you.

9 THE COURT: Any other witnesses from the Defense?

10 MS. PERALES: No, Your Honor.

11 THE COURT: Or any other kind of evidence? No. I
12 mean, I have all the documents in front of me.

13 All right. Ms. Moreno, you wanted to have some
14 argument?

15 MS. MORENO: Yes, Your Honor.

16 THE COURT: Why don't we take like a five minute
17 break and then I'll come back in and you can give me whatever
18 arguments you want and we'll try to make some decisions here
19 quickly.

20 All right. We'll be in recess for just about five
21 minutes.

22 COURT OFFICER: All rise.

23 (Recess taken from 12:31 p.m. to 1:53 p.m.)

24 COURTROOM CLERK: All rise.

25 THE COURT: All right. Good afternoon. Please be

1 seated. All right. So, Ms. Moreno, you are -- where is she?
2 Oh, there you are. You've changed seats yet again. You
3 expressed a desire to present some arguments regarding your
4 position so I'll allow you to do so.

5 MS. MORENO: Thank you, Your Honor.

6 THE COURT: If you want to do it from the Elmo or
7 whatever you would like.

8 MS. MORENO: Good afternoon, Your Honor. Celina
9 Moreno, Plaintiffs. I'll be addressing the free speech
10 argument and my colleague, Mr. Efren Olivares, will address
11 the Texas Election Code and *ultra vires* arguments as well as
12 the remaining elements of the preliminary injunction standard.

13 THE COURT: Okay. Let me -- perhaps I can short
14 circuit some of this without needing arguments and because of
15 what I perceive also as somewhat of a concession.

16 The Court finds that the January 8th, 2018 order of
17 Commissioner's Court setting policy would be constitutionally
18 vague to be enforced. It is a document that expresses only
19 the desires of the county and it contains no language actually
20 adopting any order or rule. It is expressive only of their
21 desires and so I find that it is of no force and effects in
22 terms of something that could be enforced against an
23 individual. So let's not focus on that. I declare it
24 unconstitutionally vague.

25 If it was something that was ever intended to be

1 enforced I don't know. So let's move to the county use policy
2 which I think is really the operative law or regulation that's
3 at issue here.

4 MS. MORENO: Thank you, Your Honor. So I will
5 address why the electionary policy is unconstitutional.

6 THE COURT: I grant -- I mean, I agreed with you it
7 is.

8 MS. MORENO: Including the building, that portion of
9 the building-use policy that incorporates?

10 THE COURT: I find that paragraph that incorporates
11 it by reference to be surplusage and of no force and effect
12 because it cannot enforce the original order which I declare
13 constitutionally vague. So that particular paragraph is just
14 surplusage and is of no enforcement force or effect.

15 MS. MORENO: Then what we are left with, Your Honor,
16 is the practice of the county which is that it is, in fact,
17 being enforced. It's been publicized, the policy -- the
18 electionary --

19 THE COURT: Sure.

20 MS. MORENO: -- event has been publicized; it's up
21 on the website. I would ask the Court to take judicial notice
22 that the -- here on the Starr County website under useful
23 links, the order that you just declared unconstitutionally
24 vague is up on the website. And under No. 2 for useful links
25 it's been posted and --

1 THE COURT: I mean, I don't have a problem with it
2 being posted. It's simply a statement of the desires of the
3 County. I think they're welcome to post them --

4 MS. MORENO: And, Your Honor --

5 THE COURT: -- what their desires are.

6 MS. MORENO: And so what we're left with is the fact
7 that -- in fact the order is -- the policy is continuing to be
8 enforced as recently as this Saturday. And it's being
9 enforced in a way that is not narrowly tailored.

10 You have Ms. Garza, a lone individual, standing on
11 the sidewalk with a T-shirt practicing passive speech on a
12 public -- in public fora. And so under the standard required
13 specifically we see that this is a content-based restriction
14 and it is being enforced.

15 THE COURT: How so? You know, the policy again is
16 not at issue. How do you find that the building and property
17 use policy is not content neutral?

18 MS. MORENO: Well, the building and property policy
19 specifically mentions electioneering and the language within
20 Section 12. And that policy incorporated by two --

21 THE COURT: All right. So I've declared that as a
22 surplusage. So how would you -- what other aspects would you
23 feel are not content neutral?

24 MS. MORENO: Again, I think we're left here --

25 THE COURT: Well, let me ask you this, Ms. Moreno.

1 So Ms. Garza, the incident Saturday -- again I'm trying to
2 figure out what happened there -- I think the testimony on the
3 incident earlier, on February 20th, was just a -- this
4 electioneering judge or whomever was making a decision that
5 didn't comport with the law and the County distances itself
6 from that. That's not our policy and that person has been
7 reprimanded, corrected so that doesn't happen again, that they
8 weren't enforcing something; that somebody apparently
9 misunderstood what the law was or what the county regulation
10 was.

11 Now with respect to the incident on Saturday, my
12 understanding from Ms. Garza is that she did not have a permit
13 to be where she was. That where she was was not in a parking
14 lot but was in the common area and that the County has a
15 policy that permits you to be there if you've gotten a permit
16 to do so and she hadn't gotten a permit.

17 MS. MORENO: Correct.

18 THE COURT: What else?

19 MS. MORENO: And on Saturday, you know, it was
20 Ms. Garza who was wearing a political T-shirt and not the
21 grandmother that she was talking to and was asked to leave by
22 the Sheriff Deputies.

23 And under the First Amendment if you're standing on
24 a common area, you know, very clearly sidewalks have been well
25 established as public property and it's public fora. And so I

1 would -- we submit that requiring a permit is not, in a
2 content-based way, that is not narrowly tailored. And so you
3 are -- what happens is that you are -- you're seeing
4 enforcement where political speech that is much broader than
5 what is allowed is being prohibited.

6 And so you are -- so, Your Honor, requiring a permit
7 is not permitted unless it is narrowly tailored. And we
8 submit that when you incorporate activities like Ms. Garza on
9 Saturday being threatened -- told to leave, right, or facing
10 risk of arrest, that is not narrowly tailored as required by
11 the First Amendment.

12 THE COURT: Is the law not narrowly tailored or do
13 you think its application by these Sheriff's Deputies was --
14 they were just applying in an unconstitutional way? Or do you
15 think that what they were doing really doesn't even comport
16 with the law and they were -- maybe misunderstood what the
17 regulation was and that that's a problem? I mean, what are
18 you -- give me your thoughts on this.

19 MS. MORENO: I would say both, Your Honor. But even
20 content neutral policy must still under the First Amendment be
21 narrowly tailored. And we submit that this electioneering
22 policy is certainly not.

23 THE COURT: And how would you suggest that it be
24 more narrowly tailored?

25 MS. MORENO: Well, what --

1 THE COURT: Is content neutral just requiring that
2 this applies to all county property requiring a permit to be
3 able to use the common areas of that property. Is that your
4 issue or is your issue with the complete ban on the use of
5 parking lots for anything other than parking?

6 MS. MORENO: Well, electioneering is being treated
7 differently than other activities because the County has
8 enforced the electioneering ban against people who, for
9 example, are not using the property at all, just standing
10 there on the sidewalk as Ms. Garza was as recently as on
11 Saturday, just standing around.

12 THE COURT: Now, this Press Closet (phonetic) does
13 it -- it has a walkway that leads up to the front door. That
14 walkway starts at the side street and runs along the back of
15 the courthouse greens, green area, dividing the parking lot
16 from the courthouse green area. That walkway, you know, leads
17 right to the front door of the courthouse. It's my
18 understanding that Ms. Garza was on that walkway, correct? Or
19 did I misunderstand where she was?

20 MS. MORENO: I believe she was standing on the
21 northwest corner.

22 THE COURT: Right, of that walkway that leads to the
23 front door of the courthouse.

24 MS. MORENO: Correct.

25 THE COURT: So if you were not going to walk across

1 the grass or you were not going to walk through the vehicular
2 parking area, the only way to get to the front door would be
3 on this walkway from the west side of the building, agreed?

4 MS. MORENO: Correct.

5 THE COURT: So is this the same kind of sidewalk
6 that was in the Supreme Court case that permitted people to --
7 permitted the Supreme Court basically to ban anyone from
8 political speech on their property except for the sidewalk
9 along the street?

10 MS. MORENO: I would just reiterate that the -- that
11 Ms. Garza's friend was not asked to leave where Ms. Garza, in
12 fact, was asked to leave. And that was precisely because she
13 was wearing a political T-shirt.

14 THE COURT: All right. So perhaps the law then
15 isn't being enforced in a neutral way is what you are
16 suggesting?

17 MS. MORENO: I think the ban is being enforced as
18 written, Your Honor, and we are deducing that from the way
19 Ms. Garza was treated by the Sheriff's Deputies on Saturday.

20 THE COURT: Okay. So what you call a ban I think
21 you're referring to as this policy; is that --

22 MS. MORENO: Yes, that's correct. And, you know,
23 electioneering, even if it's permitted by the property's
24 policy, it cannot be contingent on obtaining a permit when
25 you're talking about content-based regulations.

1 THE COURT: All right. Now the northwest corner
2 where Ms. Garza was standing, do you know if that was more
3 than 100 feet from the corner of the building?

4 MS. MORENO: It was outside of the 100 foot marker,
5 yes.

6 THE COURT: All right. I don't know if we had any
7 testimony on that because it was -- by the photograph it would
8 be close.

9 MS. MORENO: I believe Ms. Garza did testify, Your
10 Honor, that she was standing outside the 100 foot marker.

11 THE COURT: All right. Maybe I recall that. I can
12 review my notes. All right.

13 So the argument is that this policy statement that
14 recited the desires of the County is being enforced as though
15 it were not simply some sort of desirous -- desires of the
16 County but as though these desires were a policy of the
17 County?

18 MS. MORENO: Correct. And I think that's why in the
19 order it specifically says that "the County thereby orders"
20 and then again later "further orders" and then again "further
21 orders" and was not rescinded. But the County could have
22 rescinded on February 12th, that policy, but instead chose to
23 incorporate it.

24 And because is it a more specific policy to the --
25 when compared with the property use policy, the Rules of

1 Statutory Construction, Your Honor, do require that it be read
2 and both be given meaning. And that the more specific policy
3 override the more general property use policy.

4 And so as a result, you know, we believe the ban is
5 overly broad because it is encompassing activity not only like
6 Ms. Garza experienced on Saturday but also it talks about
7 places that have nothing to do with the voting. It
8 incorporates Starr County annex; it incorporates parks, public
9 parks; it incorporates, you know, other county buildings that
10 are public foras and the surrounding areas whether it be
11 sidewalks or seats around the county property.

12 THE COURT: So does the policy prohibit a candidate
13 from getting a permit and renting out a pavilion at one of
14 these parks to have a fund raiser, a pechanga (phonetic)? Is
15 that prohibited or can a candidate, under the use policy,
16 apply for a permit to use one of these pavilions?

17 MS. MORENO: Yes. Under that policy, even First
18 Amendment protected political speech, in order to do that you
19 would have to spend \$50 and put a deposit down in order to be
20 able to use public fora, which under the First Amendment
21 jurisprudence is very clear that the content-based restriction
22 that is in public fora cannot be -- it is protected and it
23 cannot be restricted unless that it's narrowly tailored and
24 serving a compelling government interest.

25 And we just have -- I think it's very clear, Your

1 Honor, that there is no narrow tailoring here. As you heard
2 and as you mentioned, this -- the policy relates to even
3 passive speech. If people are wearing T-shirts, people having
4 bumper stickers, even as you heard county employees having
5 bumper stickers on their car, not seeking to hand out fliers,
6 just simply going to work at their office.

7 And in addition, you know, to be -- the reason,
8 another reason the electioneering ban is not narrowly
9 tailored, Your Honor, is that again it applies to all county
10 property. And, you know, that's including polling places,
11 non-polling places, and a wide range of public fora.

12 And the illustrative examples that were attached to
13 the initial electioneering policy are just that, illustrative.
14 The order states that these are properties that are included
15 as county properties but certainly not limited to the breadth
16 of the county property.

17 And so this electioneering ban is over broad. As I
18 mentioned it covers passive speech. It bans speech on all
19 property and even with respect to polling places. The ban
20 covers areas that don't affect -- that are arbitrary and
21 inconsistent. So Ms. Garza --

22 THE COURT: I know you want to keep focusing on the
23 ban but please don't focus on the ban. It's
24 unconstitutionally vague; it's of no force; it's
25 unenforceable. I've declared it that way.

1 If somebody is being treated in a manner that's not
2 consistent with the other laws of this state and of the
3 county, the municipality, then that person has probably a
4 Fourth Amendment claim against the law enforcement officer
5 that is attempting to prohibit them from doing something
6 that's otherwise legal or arresting them if they're doing
7 something that's not otherwise illegal under the County's
8 policies.

9 A couple of quick questions. You've complained that
10 there is a cost to get the permit. But Ms. Garza never
11 applied for one, was not aware of a cost. And the County
12 Attorney, Ms. Escobar, District Attorney, testified that
13 there's no fee for the permit.

14 And in the written documents that you supplied to
15 the Court was an after-hours fee of \$25 with a \$50 deposit,
16 not a lot of explicitness to that. I don't know if you only
17 use it one hour if you get back the other 25. I don't know
18 how that works. But that's sort of implicit if it's only --
19 you're only being charged \$25 an hour.

20 And the County testified that's just to cover sort
21 of the reasonable cost of electricity, county employee maybe
22 having to go and unlock the facility or lock it up when you're
23 done. Yeah, there we go. It's Attachment A, what was pointed
24 out to the Court earlier.

25 And so can you show me where it has a \$25 permit fee

1 again for use of, say, during normal business hours?

2 MS. MORENO: Your Honor, we would argue that the
3 entire process of having to -- that you have to go through in
4 order to simply practice protected political speech is what
5 itself is unconstitutional.

6 THE COURT: All right. But you would agree that
7 there's no specific discrimination against political speech;
8 this is applied to any kind of speech or any kind of activity
9 that somebody may want to do on the county property.

10 MS. MORENO: Correct. But I would point to the
11 practice that we've seen so far of the County where you have
12 -- you have it being enforced differently when we're talking
13 about political speech versus non-political speech.

14 And the ban -- the practice, the County practice
15 currently is over broad because it only goes to political
16 speech, not to artistic speech or the Girl Scouts or to, you
17 know, religious speech. It's very specific to political
18 speech.

19 And so it is, in that sense, under inclusive by not
20 regulating -- the practice is under inclusive because it
21 doesn't regulate all that speech. It was only Ms. Garza that
22 was told to leave.

23 THE COURT: Okay. Now do you think there's an issue
24 of rightness, the fact that the two deputies pointed to her
25 shirt, asked her to leave; that she wasn't detained; she

1 wasn't charged with an offense. Do we have any constitutional
2 injury or is there -- I mean, do we have a significant enough
3 injury where the Court can even rule on this?

4 MS. MORENO: Your Honor, the case law is clear that
5 you don't have to wait in order to be arrested. And so in
6 *Reese versus McCann* (phonetic), a Fifth Circuit case, the
7 Court speaks clearly the plaintiff was not required to submit
8 to arrest but has to face a realistic danger of arrest.

9 And I think that the two Sheriff Deputies asking
10 Ms. Garza to leave after she was wearing a political speech
11 qualifies as that.

12 THE COURT: All right. I mean, my impression she
13 assumed or deduced that but the deputies never explained to
14 her why they were asking her to leave. You would concede
15 that?

16 MS. MORENO: Well, I would say just like it was
17 passive speech, right? They pointed to her shirt. And, you
18 know, I think that in that sense she got the very clear
19 message that she was going to risk arrest if she did not
20 leave.

21 THE COURT: And I guess one of my concerns is, is it
22 possible that the Sheriff's Deputies misunderstood where the
23 100 foot line was and that's why she was treated differently
24 than the person who didn't have a campaign shirt? I mean, you
25 would have to concede this is within 20 feet maybe of the

1 actual line, at worst, and possibly even less than that -- a
2 few feet outside that 100 foot line? I mean, do you know
3 whether it's just confusion on the deputies' parts where the
4 line was? I was told there was no actual red marker on the
5 street. There was only one single cone sort of at the apex of
6 the 100 foot arc.

7 MS. MORENO: I would be speculating but what I'm not
8 speculating to is what we know has been stated by the District
9 Attorney, what is posted on the website and what seems to be a
10 very clear indication that this practice that we saw on
11 Saturday is going to continue to be the policy of the County.

12 THE COURT: Okay. All right. Anything else? I
13 don't mean to keep interrupting you with these questions but
14 -- so is there anything further you would like to add?

15 MS. MORENO: Mr. Olivares is going to talk about our
16 election code and *ultra vires* claims.

17 THE COURT: All right. I mean, I would concede that
18 if that -- what you're calling the ban were actually something
19 enforceable that it would be *ultra vires*. So if that's what
20 you're going to argue, I'm going to agree with you that it
21 would be, if it were something that were enforceable.

22 MR. OLIVARES: Good afternoon, Your Honor. Yes, the
23 thrust of my argument was going to be with respect to the
24 January 8 ban which is not declared unconstitutional. It's
25 the enforcement of that ban that worries us. We want to make

1 sure that the enforcement of either Section 12 of the building
2 use policy or the January 8 ban, that that also enjoins Starr
3 County and its agents and police --

4 THE COURT: Well, it's, according to the --

5 MR. OLIVARES: -- are enjoined from enforcing it.

6 THE COURT: It is not an enforceable -- it is not an
7 order; it's not a constitutional order. It is their desire.
8 I can't restrain them from having this desire. I mean, it is
9 not -- it prohibits nothing, that January 8th order. I don't
10 know how more clearly I can state that.

11 It is -- it doesn't contain anything that could be
12 enforced against someone. It has no enforcement value. It is
13 simply a statement of some properties the County owns and
14 their desire to regulate the use of them. And it does nothing
15 more than that. Everything -- I mean, anything beyond that is
16 surplusage. I do -- as a consequence of that, whatever that
17 paragraph is that referenced it in the county use policy --

18 MR. OLIVARES: 12.

19 THE COURT: -- I think it's paragraph 12, is just
20 surplusage because it incorporates a statement of the County's
21 desires, is all it does. It doesn't create anything that's
22 enforceable.

23 So however I agree with you 100 percent. Had they
24 then in the January 8th order in fact went on to prohibit
25 something -- you know, therefore it is therefore prohibited,

1 you know, (a), (b), (c), (d), that they -- what they were
2 desiring to do, if they had actually attempted to do that it
3 would've been *ultra vires* because you can't have a greater
4 fine for committing an offense that the state has already set
5 a lesser fine for, it would be *ultra vires*.

6 MR. OLIVARES: Got it, Your Honor. What we have
7 left then is this permitting provision.

8 THE COURT: Okay.

9 MR. OLIVARES: One way in which it is not content
10 neutral is that it is being enforced with respect to political
11 speech but not with respect to other uses of the common areas.

12 For example, as we heard this morning, Ms. Garza's
13 friend, who had a baby and the baby was playing on the grass,
14 she was not asked to leave and she did not have a permit. But
15 nonetheless, the permitting requirement was applied with
16 respect to her political speech.

17 There are cases that set out the standard for what
18 kind of private restraining permits may be required. One
19 important aspect of those cases is that the authority issuing
20 those permits must not have unfettered discretion of what
21 permits to grant and what permits to deny.

22 I point to attaching a fee of the building use
23 policy that requires -- this permit I'll concede, Your Honor,
24 is also unclear. It's not clear if the after-hours fee
25 applies, the \$25 after-hours fee. And then the second clause

1 of that sentence, the \$50 deposit, it is unclear if that
2 applies only to after hours or to all permits. That "comma
3 and" is unclear.

4 But additionally, page 9 of that same exhibit, they
5 talked about a deposit. The Commissioner's Court may require
6 a deposit between zero and up to \$1,000 from an individual and
7 they may impose additional restrictions. And there's no
8 guidance as to what those are.

9 And there are cases, *Murdock versus Pennsylvania*, at
10 319 U.S. 105 (1943), that's a Supreme Court case, and a Fifth
11 Circuit case, *Horton versus City of Houston*, 179 F.3d 188
12 (1999). They describe how these permits related to protected
13 political speech cannot be expected to provide provisions of
14 permits in order to exercise protected political speech cannot
15 stand if the issuing authority or body, as is the case here,
16 has unfettered discretion on how to grant them and how much to
17 charge for them.

18 THE COURT: Okay.

19 MR. OLIVARES: And the rest of my presentation
20 related to the irreparable harm that generally goes back and
21 the enforcement of it have been causing and continues to cause
22 but I understand the Court has already ruled on that so I will
23 not --

24 THE COURT: Okay.

25 MR. OLIVARES: -- produce on that.

1 The issue at the end of the day, Your Honor, is that
2 people who are engaging in other type of speech that is not
3 political speech are not required to obtain a permit and have
4 not been required.

5 THE COURT: This is the one example of the grandma
6 who was playing with the child there at the corner of the
7 courthouse.

8 MR. OLIVARES: That's the one example we heard this
9 morning and the broader point is that commercial speech and
10 other type of speech may be regulated with a permit but not
11 political speech.

12 THE COURT: Okay. Well, is this regulating speech
13 though? Is this intended to regulate speech? I mean, let me
14 ask you this. Can the County charge anyone, for whatever
15 purpose, a fee for using a pavilion? Whether it's the Girl
16 Scouts, a political group, somebody wants to have a private
17 wedding or birthday party there, is there -- is it your
18 position that the County could not charge a fee to anyone that
19 wanted to have a political event at one of its common areas?

20 MR. OLIVARES: That is not my position.

21 THE COURT: Okay. So under what circumstances could
22 the County charge for the use of its common areas?

23 MR. OLIVARES: Commercial speech, for example. The
24 fund raisers that we were describing, other types of events.
25 But the way --

1 THE COURT: No, but you just said you could also
2 charge political functions. You could charge a fee for
3 political functions.

4 MR. OLIVARES: The case law focuses on parades.
5 We're talking about a single individual standing on the
6 sidewalk with copies of the constitution wearing a T-shirt
7 outside of the 100 foot marker. And that's not a use of the
8 property the way say having a tent and a barbecue, et cetera.
9 Just standing around on the sidewalk, that's -- wearing a
10 political campaign T-shirt, for example, that requires a
11 permit the way that other type of speech so far has not.

12 THE COURT: In its application. But the policy
13 itself is neutral. It doesn't prohibit -- it doesn't only
14 require people to get a permit who are engaged in political
15 speech. I mean, it also requires a permit for those who need
16 -- who are going to make commercial speech, in your example,
17 right? I mean, the policy on its face, it doesn't
18 discriminate.

19 MR. OLIVARES: Correct, Your Honor, the policy on
20 its face but the way it's been applied.

21 THE COURT: Okay. So that's -- so do you concede
22 then that it is -- on its face it's facially neutral, the
23 county use policy?

24 MR. OLIVARES: The requirement for permits?

25 THE COURT: The requirement for permits. That was

1 your biggest complaint. I mean, your biggest complaint, I
2 believe -- again, this is the aspect that you're dealing with,
3 not what your colleague dealt with -- is the permitting that's
4 -- No. 1, that you can't have unfettered discretion in
5 deciding upon an amount to be charged. So that's one problem
6 that you have.

7 And the second is that the permitting process,
8 although on its face perhaps is neutral, it's being applied
9 to, whatever, silence political speech, right?

10 MR. OLIVARES: Correct.

11 THE COURT: Those are your two arguments, okay.
12 Anything else you want to add on top of that?

13 MR. OLIVARES: No, Your Honor.

14 THE COURT: All right. Thank you. Anybody want to
15 respond? Mr. Fonseca?

16 MR. FONSECA: I want to start, Judge, with the issue
17 of rightness and whether -- and the harm for this application
18 for temporary restraining order. Plaintiff --

19 THE COURT: Well, that's -- I think that's your
20 biggest argument. Can I get some concessions from you first.
21 Would you concede that this January 8th order suffers from
22 vagueness and it's not actually something that could actually
23 be enforced against anybody.

24 MR. FONSECA: That's correct, Your Honor. And
25 that's why they ended up having this full policy dealing with

1 what they were actually trying to do, which as testimony would
2 -- as we heard testimony, was to make sure parking lots are
3 used as parking lots, liability issues and what not.

4 THE COURT: Okay. So now let's -- we can move
5 along. Your rightness arguments --

6 MR. FONSECA: Whether or not there was this
7 realistic danger of being under arrest. The deputies asked
8 her to leave. They didn't arrest her. They didn't threaten
9 her with arrest. We don't know whether or not she was
10 actually about to go into the 100 foot buffer zone. That
11 could've been the basis. We just don't have enough evidence
12 here to support that.

13 The grandma with the child, we don't know what
14 happened after the fact. Did the deputies, after they
15 approached the Plaintiff and asked her to leave, did they
16 approach grandma and her grand kid to also get out of the
17 greens of the courthouse. There's just not enough evidence
18 her to show the harm or the irreparable harm that Plaintiff is
19 alleging.

20 Looking a little bit -- just to respond to the last
21 two arguments that were made by counsel --

22 THE COURT: On the permitting issues?

23 MR. FONSECA: -- on the permitting issues. Page 9,
24 which was referenced, the deposit, which is referenced on page
25 9, zero to 1,000 -- up to \$1,000, I would just like the Court

1 to know that it's in relation to the preservation of
2 historical property. It's Attachment B to the policy.

3 There was a greater interest for the County to make
4 sure that this historical building is preserved. So the fact
5 that there is a bigger deposit required is -- it goes with
6 that. And it's talking about the actual courthouse itself.
7 It's not ask -- it's not a deposit for the use of the grounds,
8 the greens.

9 It would not be -- I would say it would not be --
10 you wouldn't need a \$1,000 deposit to stand outside of the
11 courthouse. But the courthouse itself does have -- there is a
12 compelling interest for the County to protect this historical
13 building.

14 Now, at Attachment A, and you have historic county
15 facilities, these deposits, it doesn't say that the use of
16 common areas, you're going to be charged this for the common
17 areas. The \$50 deposit may be required for cleanup as
18 Mr. Scolott (phonetic) testified. But there is no fee for
19 seeking that permit or seeking a waiver of these particular
20 fees, these after-hours fees and deposits.

21 I don't believe that these fees or these deposits
22 are constitutionally burdensome on any particular campaign, or
23 candidate, or church, or the Girl Scouts. It's enough to
24 preserve property for the County, whether it's cleanup or any
25 damage that a Girl Scout may do on a shrub. I don't know.

1 So I believe those are the two main permitting
2 issues. There's just not been any evidence of the difference
3 in enforcement, whether you can -- you're allowed to wear a T-
4 shirt; that's not electioneering. I don't see where you could
5 go and enforce that.

6 When you're actually engaging -- and this is going
7 back this particular instance that the Plaintiff talked about.
8 She was engaging with others in the election. She wasn't just
9 walking around with a T-shirt. She was actually engaging with
10 someone on trying to get a vote so --

11 THE COURT: Which incident are you talking about,
12 the first one, the January -- the February 20th or the one
13 this weekend?

14 MR. FONSECA: The one this weekend, Judge.

15 THE COURT: Okay.

16 MR. FONSECA: The one on the 20th I think the County
17 did enough to correct the mistake by this presiding -- this
18 polls presiding judge and remedied that. Other than that
19 there is no evidence that the enforcement of this policy has
20 been -- there's been disparate treatment between people.

21 There hasn't been any evidence of others that have
22 applied for permits and been denied or that have been
23 accepted, been given permits. And that goes to the rightness
24 issue. There's just simply been no application at this point
25 pursuant to the policy for the use that the candidates are

1 seeking.

2 And the main issue -- and it comes down to this
3 county courthouse parking lot that's been the practice of
4 tacos for votes and setting up their barbecue pits. And the
5 County has, under intermediate scrutiny, has a compelling
6 interest in making sure that citizens are able to walk from
7 their vehicle to the polling place without being harassed.
8 They have the compelling interest in protecting property.
9 They have a compelling interest in securing the safety. What
10 if there is a child running in the parking lot and runs into
11 one of these barbecue pits, what kind of liability would Starr
12 County be exposed to at that point.

13 And you didn't talk about this different court case
14 eliminating speech outside of the Supreme Court. There is a
15 difference here because at the Supreme Court they were trying
16 to -- trying to stop all speech. There was no compelling
17 interest at that point. Here we have the actual voting. We
18 have voting that's taking place and the Courts have found that
19 that is a compelling interest to protect the elections
20 process.

21 And, in fact, there is a case by the Fifth Circuit,
22 it's *Schirmer versus Edwards* and it's cited in our response,
23 it's 2 F.3d 117, in which the Fifth Circuit Court found that a
24 600 foot buffer zone was constitutional during election. In
25 fact, it cited one of the Hawaiian law where it said that

1,000 feet -- a 1,000 foot buffer zone was constitutional.

2 So whether there is this permitting process outside
3 of the 100 foot mark, I don't believe it's unconstitutional.
4 It's just a way for the County to regulate the use of its
5 property.

6 And I think that's -- that's how I can sum it up,
7 Judge. Just looking at the compelling interest that the
8 County has in passing and having this policy there has been no
9 evidence that it's been applied differently to different
10 people. It's content neutral and there hasn't been -- there
11 hasn't been harm. And quite the contrary. And the last
12 element for the TRO is whether or not there's a disservice to
13 the public.

14 And Starr County has passed this to preserve county
15 property which is taxpayer property. And the taxpayers are
16 ultimately the ones that would suffer from granting this TRO.

17 THE COURT: What was the motive for this
18 legislation? Mr. Escobar testified that it was to basically
19 fill a gap. There was no policy in the county to regulate,
20 you know, its property or to control the use of its property.

21 He mentioned two incidents. One he had this
22 hypothetical about a trailer full of cattle parked in the
23 parking lot of the courthouse and the other was the incident
24 with the pavilion that a particular commissioner apparently
25 was controlling to his own benefit. And that those were sort

1 of the reasons they decided to look to see whether there was
2 any kind of policy. Realizing there was none, implemented
3 this particular policy.

4 But you seem to indicate that the motive for all of
5 this was the electioneering that was going on in the
6 courthouse parking lot and that was the primary motive.

7 MR. FONSECA: What I'm trying to say is that what
8 the Plaintiff is focusing on is being able to continue that
9 activity. It's just one out of many as Mr. Escobar testified
10 to. The misuse by the potential or alleged misuse of property
11 by a government official; being able to park a trailer with
12 cattle at the county courthouse.

13 Starr County has grown and the courthouse may have
14 at some point not needed this type of policy, use policy for
15 the parking lot and the courthouse. But now that there is
16 increased traffic, now that there are issues on how they're
17 being used, the liability issues on whether competing
18 campaigns are -- they're all kicking at each other, those are
19 things that the County can consider and they should consider.
20 They should look at whether or not what is happening on their
21 property, not just because of the potential liability concerns
22 for the County but also for the safety of its citizens.

23 If I'm going -- if I'm going to vote I want to make
24 sure that I can park, that there is sufficient parking; that I
25 don't have to rely on having to go park at the Knights of

1 Columbus Building a block away because all these tents and all
2 these barbecue pits are being set up outside in the parking
3 lot. But I can just easily park there and walk to the polling
4 station.

5 I could think of a woman with her children; I could
6 think of my wife having to carry a baby and having to carry
7 the stroller, having to walk 100 feet versus having to walk a
8 couple of blocks. It makes a difference.

9 That is in the interest of the County to make sure
10 that the election process makes it a big easier for people to
11 vote, not necessarily to hinder it by allowing this type of
12 electioneering on the property.

13 THE COURT: But this also, you would agree,
14 prohibits political protests by citizens at a county park
15 without a permit, sort of the rawest form of political speech
16 if people decided to get together, assemble and protest some
17 political activity of its government at a city park. This
18 would prohibit it without a permit, you would agree?

19 MR. FONSECA: It would, Your Honor.

20 THE COURT: And so if -- I mean, how do you ensure
21 that people learn on a Friday afternoon of a shooting in a
22 Florida school who want to get together on a Saturday, or a
23 Sunday, or a Monday at a park and protest or advocate for gun
24 control? In Starr County they would not be able to do that
25 because of the permitting process.

1 MR. FONSECA: Your Honor --

2 THE COURT: At a county -- on county property.

3 MR. FONSECA: Right.

4 THE COURT: They couldn't go to a park and hold up a
5 sign that says, "We need gun control."

6 MR. FONSECA: Two things, Your Honor. One, the
7 permitting process allows for quick permits to be granted by a
8 county judge.

9 THE COURT: But over a weekend the courthouse isn't
10 open, county judges aren't available.

11 MR. FONSECA: Granted. However, the properties that
12 Starr County owns and which we've shown you the pictures of,
13 these aren't typically places where people congregate. These
14 are not in the middle of town.

15 South of the courthouse you have a promenade of a
16 big park. That's not county property. We're not prohibiting
17 people from gathering there. People are not prohibited from
18 being around the courthouse. The courthouse is a pretty small
19 block. It takes up a lot of space.

20 And if you look at the -- just by looking at the
21 map, these aren't the typical parks that are available for
22 anybody to use. These are either remote locations or they're
23 being used for -- as a firehouse, as a library, for vehicles
24 for Starr County, a La Placita, for example.

25 So it's -- I don't see it being prohibitively -- it

1 being prohibitive of being able to -- for assistance to
2 express their views on property.

3 THE COURT: All right. I mean, I'm not familiar
4 with all the parks and gathering places in Starr County.
5 There's a fairgrounds listed. I don't know if that's a place
6 where people might assemble to protest or advocate for a
7 particular political position or there's also something listed
8 as Zarate Park. I couldn't really tell.

9 MR. FONSECA: That's the same as La Victoria
10 Community Center.

11 THE COURT: Okay. And I couldn't really tell how
12 much property was there, that was on a place where somebody
13 might want to go and advocate on behalf of a political cause.
14 But this would certainly prohibit that without a permit.
15 Nobody would be able to go and stand in the park or even out
16 in front of the fire station there in business, that high
17 traffic area, stand up against the street there on county
18 property with a sign that says, you know, "More gun control,"
19 for example. They would need a permit to do that.

20 MR. FONSECA: And, Your Honor, to that, the courts
21 have upheld permits for parades. If people are going to
22 congregate to voice their opinion, if I were in Washington DC
23 trying to fight for something and I didn't apply for a parade
24 permit, I'm sure I would find some -- be penalized in some way
25 or form.

1 And looking at this particular case and what the
2 Plaintiffs are trying to do, Your Honor, in restricting the
3 application of this policy during the election season at
4 polling locations, I would focus on that fact that stopping
5 the enforcement of this policy would go against the interest
6 of the County of protecting property and safety of its
7 citizens.

8 THE COURT: All right. Thank you very much.

9 MS. LEEDS: Less than five minutes of rebuttal, Your
10 Honor.

11 THE COURT: You may.

12 MS. LEEDS: Mr. Alvarez, did you want to say
13 something?

14 MR. ALVAREZ: Judge, I would just like to just weigh
15 in a little on the gun control example that you were giving,
16 Judge. The reason those permits are given, Judge, is so the
17 law enforcement community can get some security in there just
18 in case riots happen back and forth and so on. Just giving
19 them heads up, I mean, be alert, be affirmative. If somebody
20 -- and those -- I just wanted to weigh in to that extent,
21 Judge. Nothing further. I kind of agree with Mr. Fonseca.

22 THE COURT: All right. No coincidence there. All
23 right. You want to respond to some of those arguments
24 Mr. Fonseca made?

25 MS. PERALES: Yes, Your Honor, specifically in

1 response.

2 First, the County, through the District Attorney,
3 has stated that the County will subject Ms. Garza's speech to
4 a permitting process. Although the Court correctly observes
5 that some political speech can be subject to a permit and fee,
6 this permitting process is unconstitutionally over broad. So
7 within the context that permits may be okay, for example, in
8 parade cases where there was a concern about security or
9 trash. But a permitting policy that applies all the way to
10 sweep in Ms. Garza's political conduct which includes passive
11 speech as well as perhaps handing out a sample ballot for the
12 Democratic primary, is unconstitutionally over broad.

13 Mr. Fonseca has said fees are, quote, enough to
14 preserve the property of the county. And he also said that he
15 did not, in his opinion, think that the fees would be a
16 financial burden on campaigns or groups.

17 But again, the permitting policy is over broad
18 because it also imposes a fee on Ms. Garza and any other
19 individual not supported by campaign funds or organizational
20 funds to have to go and secure a permit and pay some kind of
21 fee. And as Mr. Olivares pointed out, of large digression on
22 the part of the County.

23 THE COURT: Okay. Well two things. One is, there's
24 been no evidence that there's a fee for the permit.

25 And the second thing is the evidence was that there

1 was an after-hours fee of \$25, some vagueness something about
2 the \$50 deposit. But a \$50 deposit to me is something that it
3 -- generally what that means is you get it back. It's a
4 deposit to secure either your attendance or that you return
5 the property in good condition. I mean, I think that's
6 implicit in the word that it's a deposit, it's not a charge.

7 The third thing is as you pointed out the large
8 range of fee up to \$1,000 dealt only with the county
9 courthouse and not any other county property. There was a --
10 it was specific to the actual footage of the courthouse proper
11 and because that was the only historical structure that the
12 County owns.

13 MS. PERALES: Your Honor, I would point the Court's
14 attention to page 2 which is the building and property use
15 policy. At the bottom, at the very last line it says --

16 THE COURT: Paragraph 5?

17 MS. PERALES: This is paragraph 5(b) specifically
18 and the last sentence. Applications are not valid until all
19 fees are paid.

20 Let's just assume for the moment that it is simply a
21 \$50 deposit. Conditioning Ms. Garza's political activities,
22 what she does specifically and testified to today, on a \$50
23 deposit and going through the process of applying for a permit
24 and waiting for it to come, paying any necessary fees which
25 are required for application, is unconstitutionally broad in

1 Plaintiff's view. It may not be as applied to an enormous
2 parade or some other type of political speech activity but it
3 is with respect to Ms Garza.

4 Second, I would like to turn to another comment of
5 Mr. Fonseca. With respect to the property use policy at large
6 -- now, just moving away from the permitting process --
7 Mr. Fonseca said a T-shirt is not electioneering. That is not
8 correct. A T-shirt is electioneering and we would point the
9 Court's attention to two things.

10 First, the Texas election code --

11 THE COURT: I think he said that that's -- maybe he
12 -- I understood that he said a T-shirt is electioneering and
13 that the deputies might've been confused, or she was too close
14 to the line. There just wasn't enough evidence. That she was
15 perhaps electioneering within the 100 foot line and that was
16 the basis for them asking her to leave.

17 Again, this is conjecture. It could've just as
18 easily also have been they were asking her to leave because
19 she was on the property, on the common ground and didn't have
20 a permit, even though they were letting grandma and the
21 grandchild play in the grass adjacent to her. So, it's
22 speculation.

23 But I think he conceded that she had a shirt on and
24 that might've been a motive -- a shirt that had a political
25 speech and that may have motivated the deputies. But I

1 concede we're all speculating.

2 MS. PERALES: And certainly the Texas election code
3 would not allow her to wear that within the 100 feet or inside
4 the polling place.

5 THE COURT: Agreed.

6 MS. PERALES: We know that. And we also know
7 there's a case pending before the U.S. Supreme Court right now
8 regarding somebody who wore a political T-shirt inside a
9 polling place and there really is no question that it is
10 electioneering. Perhaps Mr. Fonseca misspoke.

11 But again, the policy, the property use policy is
12 not narrowly tailored to the extent that it regulates
13 Ms. Garza's conduct in non-voting areas.

14 For example, the annex. The District Attorney
15 mentioned that vote counting occurs at the annex on election
16 evening. Of course, campaigns are allowed to send their
17 representatives to monitor that process. And what we're
18 seeing here is that this property use policy would not allow a
19 representative of a campaign, with a campaign T-shirt, to be
20 present at the annex for vote counting for monitoring
21 purposes. This bears little justification -- this bears
22 little relationship to the justification that's offered by the
23 County about interference with voters.

24 THE COURT: Where -- I don't see that that's not
25 permitted? You can wear -- I mean, as long as you're not

1 violating the state election code, this doesn't prohibit
2 somebody from wearing a badge and parking in an appropriate
3 parking spot and walking into the county annex with their
4 campaign buttons on their lapel or placards on their car, does
5 it?

6 MS. PERALES: Well, as to the car, Your Honor, in
7 the parking lot we think that now that the Court has found
8 Section 12 of the property use policy to be surplusage and
9 without a fact, there is another paragraph that says you can
10 have a bumper sticker on your car and park in the parking lot.
11 But the property use policy does prohibit the wearing of a
12 political T-shirt on county property, fully if it's in the
13 parking area, and then in common areas without a permit.

14 THE COURT: Where does it prohibit it for people
15 that are appropriately parked and --

16 MS. PERALES: And the person is wearing the T-shirt
17 and enters onto county property.

18 THE COURT: -- wearing a T-shirt, right.

19 MS. PERALES: I believe that is -- it is part of
20 this dispute, Your Honor, that somebody who is electioneering,
21 which is wearing that T-shirt --

22 THE COURT: Right.

23 MS. PERALES: -- cannot do so on county property
24 without a permit.

25 THE COURT: Well, we were just told that the Justice

1 of the Peace who is running for election that works there at
2 the very courthouse parks his truck there with his sign in the
3 window each day since February 20th.

4 MS. PERALES: Yes, Your Honor. With respect to
5 parking we now understand that the property use policy to
6 allow parking with a bumper sticker because of the Court's
7 ruling regarding surplusage. Now just with respect to the T-
8 shirt --

9 THE COURT: Okay. Let's talk about that.

10 MS. PERALES: -- or holding a small handbill or a
11 palm card, these are electioneering acts.

12 THE COURT: Okay.

13 MS. PERALES: They are not permitted on county
14 property without a permit. Electioneering, as well as other
15 types of political and nonpolitical speech, are not allowed.

16 THE COURT: Now where is the T-shirt prohibited?
17 Where do you read that wearing a T-shirt -- I'm going to use
18 the JP Martinez as an example.

19 Having -- being a voter and having gone to the
20 polls, it's very typical that the candidate wears a shirt with
21 embroidery of their campaign on the breast. And I only saw
22 the back of Mr. Martinez but typically he had the kind of
23 shirt on that's done that way.

24 So let's just assume for this hypothetical that he
25 did. Are you suggesting that he could not park his car,

1 wearing his shirt with his name and whatever, what he's
2 running for on the breast of the shirt, then walk into the
3 county offices without being in violation of the use policy?

4 MS. PERALES: He can park his car, Your Honor, yes.
5 But with that T-shirt on, and as the District Attorney
6 explained with respect to Ms. Garza's activities, he cannot
7 park his car and stand in the parking lot and talk with a
8 voter.

9 THE COURT: Right.

10 MS. PERALES: He cannot go to the grassy area next
11 to the county and stand there with his T-shirt, right? That
12 would be subject to a permitting process, he cannot do it
13 without a permit. And he cannot be elsewhere on county
14 property with that T-shirt without getting permission from the
15 County. Because otherwise that act, that use of county
16 property is not approved.

17 THE COURT: Where is it prohibited? I'm not
18 following you.

19 Now, you gave a couple of examples that were not
20 similar, they were rather dissimilar examples. Approaching
21 people in the parking lot, talking to them about your campaign
22 and attempting to hand them push cards, that's different than
23 parking in a parking lot with your T-shirt on and walking into
24 the building to conduct county business or visit a county
25 office or apply for a permit. So point that out to me because

1 it's something that I may have missed.

2 MS. PERALES: This information, Your honor, is
3 contained in Plaintiff's Exhibit 2 as well as the testimony of
4 the District Attorney.

5 THE COURT: All right. So show me in Plaintiff's
6 Exhibit 2 and then we'll get to the testimony.

7 MS. PERALES: Okay. There are provisions here in
8 Plaintiff's Exhibit 2 that talk about use of county property.
9 And use of county property is either entirely prohibited --
10 and that would be with respect to parking lots -- or it would
11 be subject to a permitting process. And that is how the
12 property-use policy operates through all of its terms.

13 You cannot use county property without a permit.
14 And there are other areas of county property you cannot use at
15 all, which is the parking lot. And that is the testimony of
16 the District Attorney as well when he talked about the need to
17 have a policy that regulates use of the county.

18 If the Court determines that wearing a political T-
19 shirt and standing near a grandmother whose child is -- whose
20 grandchild is playing in the grass, is not use of county
21 property, then we wouldn't have this dispute. Then none of
22 these terms would apply to the political speech of Ms. Garza.
23 But if Ms. Garza's activity falls under this policy as the
24 District Attorney has made absolutely clear, then we have
25 constitutional over-breadth problems.

1 THE COURT: So again, regardless of what motivated
2 Defendant, the deputies on this Saturday in the incident with
3 Ms. Garza, this policy does prohibit her from engaging in
4 electioneering on a common area of the courthouse.

5 MS. PERALES: And we would assert that a lobby is a
6 common area and the areas where -- in the waiting rooms
7 outside of courtrooms. These are all common areas. The grass
8 outside. Not the parking area because that is subject to
9 different regulation. But --

10 THE COURT: Well, it's -- I mean, I --

11 MS. PERALES: -- if Ms. Garza cannot --

12 THE COURT: -- so you're defining common areas as
13 areas that can be locked down at night? I mean, the fact that
14 the public can enter during the day and go up to a counter in
15 the Clerk's Office through a hallway that's open to the
16 public, I don't read this as applying to that. I read this as
17 applying to facilities that are open to the public all day,
18 all night, again like a -- what's outside of a locked
19 building. You know, the county can lock its offices at night
20 and prohibit anybody from coming in.

21 MS. PERALES: So if -- there is nothing in the -- we
22 don't believe that there is anything inside this property use
23 policy that distinguishes between use of county property, for
24 example, to go to the annex and participate in monitoring the
25 vote counting, versus standing in the grassy area beyond the

1 100 foot perimeter outside the county courthouse. And thus
2 one can see the concern that we have.

3 But even if we just go to the grass, let's pick
4 another spot of grass, a county park. A county park, grassy
5 area, common use. An individual cannot solicit signatures for
6 a petition. So this is another example of the
7 unconstitutional over-breadth issue with the property use
8 policy, is that somebody cannot, like Ms. Garza, wear her T-
9 shirt, hand out campaign material. Somebody cannot gather
10 petition signatures. All of those things cannot happen in the
11 common area of a park.

12 And the policy could be narrowly tailored, Your
13 Honor. It could distinguish between active and passive
14 speech. Wearing a T-shirt versus approaching a voter.

15 The policy could distinguish between tents and
16 barbecue pits that take up more than a certain amount of
17 square footage versus the activity of Ms. Garza wearing a T-
18 shirt, handing out sample ballots and political materials but
19 it does not.

20 The policy should be based on specific findings and
21 it should be narrowly tailored if it's going to sweep in
22 Ms. Garza's political conduct. Because it does not and
23 because it subjects her conduct to either a permitting process
24 or an outright prohibition, it is unconstitutionally over
25 broad.

1 THE COURT: Okay.

2 MS. PERALES: Thank you.

3 THE COURT: All right. So, Mr. Fonseca, I do have a
4 question that just occurred to me in a hypothetical. So what
5 does the county require of somebody who wants to go watch
6 their kid play baseball on the county baseball park? So they
7 are going to go use a bench on -- the bleachers to sit and
8 watch their child play on the county baseball field.

9 MR. FONSECA: Well, they're certainly not required
10 to have a permit.

11 THE COURT: Why not? They're using the common area
12 of a county property.

13 MR. FONSECA: But the use has already been
14 designated as a spectator sport.

15 THE COURT: Well, where does -- this doesn't say
16 that. This says -- you have two properties here. You have
17 parking lots and everything -- and common areas, basically
18 everything else. And if someone wanted to go have a picnic at
19 La Placita Park on a nice spring day with their spouse and
20 child, would they need a permit to go do that?

21 MR. FONSECA: (No audible response.)

22 THE COURT: Because they are going to now use that
23 property, the common area of that property would they need a
24 permit?

25 MR. FONSECA: It's my understanding that there are

1 -- at times these parks and community centers are open to the
2 public for their use as -- to be used outdoors, either to have
3 games or to have access to just having a picnic. There are
4 times when that happens and that's designated by the actual
5 community center that we're talking about.

6 Here we have not -- it's La Victoria and San Nicia
7 Park (phonetic). Those are the two with the biggest green
8 common areas. And the community centers which are charged
9 with putting on events or holding any activities, the county
10 opens that up. At that point if the county is inviting people
11 to take on any of those activities or whether or not it allows
12 baseball teams to put on a game, then at that point it's
13 already been permitted.

14 THE COURT: So does it -- is there a permit required
15 now to have a baseball game at the park?

16 MR. FONSECA: The policy, yes, Your Honor.

17 THE COURT: Is that park locked down? I don't know
18 that you would know that answer?

19 MR. ALVAREZ: Judge, just to weigh in again. Most
20 of those events, Judge, the -- like Little League, they ask
21 permission to hold baseball games between this day and this
22 day, you know. And they ask for that and so it's the
23 understanding of everybody that you can go and be a spectator
24 to watch your kid play there because the league has asked
25 permission of the county to use their park.

1 THE COURT: So sort of on your behalf they've gotten
2 the permit?

3 MR. ALVAREZ: Right. And the league has asked for
4 that. So I would take it that that's okay. I mean, I don't
5 see a problem with that.

6 THE COURT: Well, I'm just trying to, you know, to
7 read this literally. I just want to see how far it goes. I
8 mean, it seems to me that -- I mean, are there any parks that
9 are open, you can just pull up, they're not locked down during
10 the day where somebody can just go and park and whatever?

11 MR. FONSECA: Most of them are locked down, Judge.
12 I mean, the ones that I know are locked down. You can't just
13 go in there whenever you want and get out whenever you want.

14 THE COURT: And for some that -- it sounds like
15 there may be one or two that aren't -- I guess the Sheriff
16 Deputy could say: Hey, no picnics? Have you got a permit to
17 have your picnic here?

18 I mean, you could also see where it gets out of
19 hand. You know, maybe a husband, wife and a child having a
20 picnic is not a big deal. But then if the picnic is, you
21 know, 500 people, you know, then it's a problem. And I can
22 see why the county may want to permit everyone and leave it up
23 to the officer's discretion, I guess, on what --

24 MR. ALVAREZ: Some of the parks can be used like for
25 a concert or a little band or something like that. They have

1 to ask permission at that point, a permit from the city or the
2 county. I mean, that's how it is. But, I mean, because it's
3 not a sporting event; it's something else beyond what it's
4 designated for in that area, Judge.

5 THE COURT: Oh, okay. And so the County would agree
6 that this policy does prohibit -- again, I'm going to keep
7 using Martinez as our an example -- him from parking his -- I
8 mean, he would be permitted to park his truck in the parking
9 lot with his political banner. But as he walked into the
10 courthouse where his office is he would not be able to
11 approach people with a push card, for example, or ask people
12 to vote for him on his way up to the 100 foot point.

13 MR. FONSECA: That's correct, Your Honor. It's a
14 parking lot, it's a parking zone, and that's what it's being
15 used for. And that prohibition applies not just to him but
16 for anybody.

17 If a church group wanted to pass out any leaflets in
18 the parking lot it would apply to them, too. And that goes
19 back to the content neutral aspect of this policy and why
20 intermediate scrutiny applies.

21 And you can see that on page 4 of the policy where
22 depositing or posting handbills or flyers is prohibited. And
23 so is alms and contributions. These are specifically
24 enumerated under Section 8 of the policy. You'll see it on
25 page 4.

1 THE COURT: So there -- I'm just looking back at the
2 courthouse. There is a sidewalk around the perimeter of the
3 courthouse along the public streets. I'm going to say on
4 three sides of the courthouse. I mean, why isn't that
5 sidewalk the same protected public fora as in the case, the
6 site of which I don't have here, but involving the protest at
7 the U.S. Supreme Court?

8 MR. FONSECA: The interest is different Your Honor.
9 When the Supreme Court is considering a case it's hearing
10 argument it's different than when the courthouse is a polling
11 place and when its people are trying to get to the courthouse
12 to vote. There's a distinction there.

13 THE COURT: But there is no distinction -- but still
14 this would prohibit somebody from protesting along the front
15 of the courthouse, let's say, protest something that the
16 County Commissioners had just approved, or was set to approve,
17 or to vote on and they wanted to act to protest it or advocate
18 for it. Why would they not be able to use -- I mean, why
19 couldn't -- why wouldn't it be constitutional for them to use
20 that front sidewalk and yet that's prohibited?

21 MR. FONSECA: And that's correct, Your Honor. I was
22 focusing on this case itself and what the complaint is and the
23 request for the temporary restraining order. But they have --
24 the permit process is available to use in any area of the
25 property. If they know that there is a -- if the County

1 Commissioners are meeting, you know when they're meeting.

2 THE COURT: But the Supreme Court didn't require a
3 permit. I mean, that's what they're saying, is you can't
4 restrict that; it's public fora. I mean, we can't restrict
5 who protests here on the front sidewalk of this building; it's
6 public fora. And yet this particular policy I believe
7 encompasses that sidewalk. I mean, it's kind of hard because
8 I only circled in red the parking lot of the courthouse.

9 Yeah. Well, it would be -- I mean, they would -- I
10 assume that's still common areas? I don't know. Maybe that's
11 not defined as common area. Common area excludes the
12 perimeter of parking lots? I mean, excuse me. Common area
13 would exclude the perimeter of sidewalks of a public building?
14 And yet that really wouldn't guard against it. Yeah, that's
15 the -- I have a little bit different diagram. I was looking
16 at the one that the Plaintiff's provided as part of their
17 Exhibit 2.

18 UNIDENTIFIED SPEAKER: That is Defendant's
19 Exhibit 8.

20 THE COURT: 8, right. You can just see there's a
21 sidewalk perimeter against the public streets on three sides
22 of that courthouse.

23 MR. FONSECA: I'm sorry, the courthouse
24 (indiscernible).

25 THE COURT: Yeah. Well, I mean, I'm just concerned

1 that that this policy incorporates the sidewalk and that it
2 bans all speech without a permit -- political, religious,
3 commercial, et cetera -- people along that sidewalk and that
4 that Supreme Court case -- again, I mean, if you go read it,
5 it's -- but it may be -- but that ban may be in conflict with
6 what that Supreme Court case said. I'm just concerned about
7 that. We need to look at that.

8 All right. Well, no good answer. I guess the Court
9 just needs to look up the law a little bit. All right.

10 So, you know, I need a little bit of time to
11 continue to do some briefing here on some of these issues and
12 get them resolved. I'm not going to have a decision today, I
13 don't believe, given it's already 2:00 o'clock, almost 2:00
14 o'clock.

15 You do have my preliminary rulings on the January
16 8th order. That's not really an order. I mean, it's -- I've
17 declared it unconstitutional vagueness. It's not something
18 that's enforceable but it doesn't appear to be something that
19 was intended to be enforced; it's something that talks about
20 what the desires are of the County and subsequently the
21 following month they actually entered or adopted a policy
22 that's somewhat in conformance with some of the desires but
23 not completely.

24 So the Court will issue an order hopefully within
25 the next day or so regarding this. It doesn't appear that

1 there are any significant problems occurring. The County has
2 been advised that this January 8th document isn't something
3 they can enforce although they've told me here today they
4 weren't enforcing it and that the incident that happened on
5 February 20th was a misunderstanding by an election judge who
6 was quickly corrected and the only other incident relating to
7 anything like this happened this weekend with Ms. Garza.

8 And the Court is still kind of unsure exactly what
9 happened there beyond the deputies asking her to leave. So
10 the Court doesn't know why they asked her to leave; whether it
11 was some attempted enforcement of this policy or some other
12 reason. She did mention they pointed to her shirt which had a
13 campaign slogan on it so likely it had something to do with
14 that. But again we don't know without hearing from these
15 deputies, which the Court heard no evidence from.

16 All right. Then there being nothing further we'll
17 be in recess and we'll try to get you an order here quickly.

18 COURTROOM CLERK: All rise.

19 (Proceedings concluded at 1:53 p.m.)

20 * * * * *

I certify that the foregoing is a correct transcript
to the best of my ability produced from the electronic sound
recording of the proceedings in the above-entitled matter, and
this is an accurate transcript, as best as is possible, due
to conditions of the recording.

/S/ MARY D. HENRY

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